DOCUMENT RESUME

ED 261 929 SO 016 784

AUTHOR	Eveslage, Thomas
TITLE	The First Amendment: Free Speech & a Free Press. A Curriculum Guide for High School Teachers.
PUB DATE	85
NOTE	76p.; Supported by the Gannett Foundation, the Society of Professional Journalists, Sigma Delta Chi, and the American Newspaper Publishers Association Foundation.
AVAILABLE FROM	Quill and Scroll, The University of Iowa, Iowa City, IA 52242 ($4.50 each).
PUB TYPE	Guides - Classroom Use - Guides (For Teachers) (052)
EDRS PRICE	MF01 Plus Postage. PC Not Available from EDRS.
DESCRIPTORS	Advertising; Broadcast Television; Censorship; Civil Rights; Confidentiality; Constitutional Law; Copyrights; Court Litigation; Curriculum Guides; English Instruction; Ethics; *Freedom of Speech; High Schools; Journalism; Learning Activities; *News Media; News Reporting; News Writing; Privacy; Resource Materials; Social Studies; Student Responsibility; Student Rights
IDENTIFIERS	*First Amendment; Libel

ABSTRACT

This curriculum guide is intended to encourage students to learn how everyone benefits when young people, other citizens, and the media exercise the constitutional rights of free speech and free press. Background information on free speech issues is provided, along with classroom activities, discussion questions, and student worksheets. There are 11 chapters. Chapters 1 and 2 summarize why the First Amendment should be studied and how that study might be approached. A brief discussion of how constitutional law and courts operate is provided in chapter 3. Other chapters outline and discuss specific free speech topics affecting the media. These include free expression versus government authority; libel; privacy and copyright; confidentiality, contempt, and the courtroom; obscenity, responsibility, and codes of ethics; and broadcast and advertising regulation. A chapter on students' rights and responsibilities reviews the earlier chapters within the context of the high school and student publications. The guide concludes with a brief summary of significant court cases and annotations of useful resources. (RM)

Free Speech & a Free Press

The First Amendment:

Free Speech & a Free Press

A curriculum guide for high school teachers

Prepared and published by Thomas Eveslage
Associate Professor of Communications, Temple University

Supported by the Gannett Foundation, the Society of Professional Journalists, Sigma Delta Chi and the American Newspaper Publishers Association Foundation

Printed in the United States of America
Cover and book design: Alberto Pacheco
Typography: Scott Photographics
Production: Joan Crofford
Printing: Craftsman Press

Contents

Introduction

More Than a Teaching Tool

Most of us are busy, and, though we may be interested, do not ever consider taking time to attend even the most sensational courtroom trial. We probably have not seen the city council at work or attended a school board meeting. Nor have many of us criticized the mayor in a letter to the editor, carried a picket sign or attended a rally protesting a tax increase or calling for a nuclear freeze. We haven't asked to see what the public school or the Justice Department has on file about us and our family. And we might be so afraid of some legal sanction that we hesitate to criticize publicly our school officials, state senators or county commissioners.

But we could. In fact, we are encouraged to tell people what we think, because almost 200 years ago, the United States was defined and framed in a Bill of Rights. That document told us that certain freedoms—to think and believe and assemble and speak and write and publish and distribute and hear and read—were the foundations of our democracy. Since then, the country has flourished and democracy has worked *because* our public officials—judges and law enforcement personnel and politicians alike—can be watched and evaluated. Moreover, they have little power to prevent us from telling them and others what we think.

Yet, many citizens today either take these freedoms for granted or don't know how free they really are. The U.S. Constitution and its Bill of Rights erode and lose value without proper care and use. This should concern those of us who work with young people, for these citizens will lead and make decisions for us one day. They should be shown why the First Amendment remains as important today as it was in 1791.

The First Amendment: Free Speech and a Free Press makes it easier for high school journalism, social studies and English instructors to teach about the First Amendment. This curriculum guide is intended to encourage students to learn how everyone benefits when young people, other citizens and the media exercise the constitutional rights of free speech and free press.

The contents of this curriculum guide reflect the thinking of 129 educators in 30 states who responded to a two-page questionnaire mailed in 1981. Respondents represented the Secondary Education Division of the Association for Education in Journalism and Mass Communications, the Journalism Education Association, *Quill and Scroll* and the Minnesota High School Press Association. The lists of resources, questions, activities and cases evolved from the survey results.

What follows are more questions, activities, resources, and topics than generally are covered in most units on the First Amendment. The topics are in the order of importance to most teachers who reviewed the guide, but portions may be used as appropriate to specific courses. A broad approach to the First Amendment allows teachers flexibility while offering them a useful context for each section.

Besides background on free speech issues, the guide includes classroom activities, discussion questions and worksheets. Teachers who want additional information may consult the annotated bibliography or the summary of cases.

Chapters 1 and 2 summarize why the First Amendment should be studied and how that study might be approached. A brief discussion of how the law and courts operate is in Chapter 3. Other chapters outline and discuss specific free speech topics affecting the media. The chapter on student rights and responsibilities reviews the earlier chapters within the context of the high school and student publications. The book concludes with a brief summary of significant cases and annotations of useful resources—organizations, periodicals, books, magazine articles, filmstrips, films and video and audio tapes.

The author was responsible for selecting and preparing the material, but is deeply indebted to those who supported this project. If publication advisers and teachers find this booklet useful, credit is due to many: the Gannett Foundation, the Society of Professional Journalists, Sigma Delta Chi and the American Newspaper Publishers Association Foundation for financial support; Judith Hines and Rosalind Stark of the ANPA Foundation; Barbara Repa of the American Bar Association and Louis Ingelhart of Ball State University and the First Amendment Congress for their thoughtful editing; Richard Johns and the Quill and Scroll Foundation; Anne Nunamaker, Robert Lewis, and Steven Dornfeld of the Society of Professional Journalists, Sigma Delta Chi; the Secondary Education Division of the Association for Education in Journalism and Mass Communication; J. Marc Abrams of the Student Press Law Center; Tom Engleman and Sherry Haklik of the Dow Jones Newspaper Fund; Paul Sullivan of the Department of Journalism at Temple University; and the many teachers—including John Bowen, Bill McNamara, Vic Silverman, George Taylor, Dorothy McPhillips and David Smith—who have made practical and valuable suggestions.

Chapter 1

Overview and Rationale

The First Amendment and the free press that it guarantees are not luxuries; they are not fringe benefits that come with being U.S. citizens. They are instead the heart and soul that give meaning to American citizenship and set this country apart from many others.

Such prominent researchers as George Gallup, Jr. and Daniel Yankelovich have noted the disturbing fact that many Americans—including high school students—do not know what the First Amendment is, what freedoms it protects, why it is important or to whom it applies. We are taking our basic freedoms for granted, Gallup says, and too many citizens are becoming indifferent, even hostile, to the press.

Journalists, educators and other concerned citizens responded to these findings in 1980 during two sessions of a First Amendment Congress—one in Philadelphia and another in Williamsburg, Virginia. Of overriding concern was how to increase public awareness of the First Amendment. One resolution said, in part: "Our problems can be solved by a concentrated, two-pronged approach aimed at the public generally and at students specifically." Educating the youth, the delegates believed, "would, over the long term, produce citizens who have a clearer understanding of First Amendment rights."

Jean Otto, chairman of the First Amendment Congress, restated this concern at a 1984 national conference of journalists: "If the First Amendment is to survive during a period of increasing efforts by government to operate in secret, at a time when narrow interest groups are ever more willing to stifle all voices but their own," she said, "the press and the people must make common ground, or the freedom of both is endangered."

Freedom of the press often includes discussion of student publications, and comparisons between school and professional media may help young people more clearly understand the First Amendment. But students must prepare to be better media consumers and contributing citizens. First Amendment study within the context of the mass media should continually stress how a free press benefits them as citizens and can preserve their personal freedoms in the future. If, as Gallup observed, six of ten teenagers cannot name the document that guarantees them a free press, it is unlikely that as adults they will suddenly appreciate and defend the First Amendment.

This curriculum guide fits diverse needs. It offers a four-part unit on the First Amendment and examines specific free press concerns such as censorship, libel and privacy within broader concerns such as accorded freedoms, constraints and ethical limitations. The rationale for each section follows. The rest of *The First Amendment: Free Speech and a Free Press* contains information, activities and resources that can fit into the four-part framework. The four sections taken together ideally constitute one unit, but could be used separately during a course.

Objectives

This unit should increase students' understanding and appreciation of the First Amendment. By completing the unit, students will learn that the First Amendment is essential to a free society and a key to this country's vibrant and vigorous mass media, and that it is the First Amendment that helps develop enlightened, contributing citizens.

Part one

Foundations of freedom. In this part, students learn how and why the First Amendment evolved, what it contributes to society and how it has been nurtured and interpreted over time. An introduction to the courts and the significance of the U.S. Supreme Court and legal constructions will reveal to students how First Amendment freedoms are protected, redefined and limited.

If this discussion comes early in the course, students could see the document applied in later discussions of journalism, sociology, governmental affairs, economics and history. (Chapter 2 on the First Amendment and Chapter 3 on the courts provide additional suggestions for this discussion.)

Part two

Government and accorded freedoms. The First Amendment stands strongly for the proposition that there should not be prior restraint of the press. The U.S. Supreme Court said this in the 1931 landmark case of *Near v. Minnesota,* and many judges since than have repeated it. Freedom to speak or print is not unconditional, but any arm of government that wants to stop speech has the burden under the U.S. Constitution of justifying suppression. (Chapter 4 deals in more detail with individual freedom and censorship.)

Springing from the First Amendment and other laws are additional freedoms accorded all Americans:

- The right to attend public meetings and see public records, to learn what our elected officials are doing and

how well they are serving us—and to criticize them if we don't agree with their performances. (See Chapters 4 and 5.)
• The right to attend public trials and not be excluded from other places to which the public is allowed access. (See Chapters 4 and 7.)
• The right to discuss and write about newsworthy aspects of a person's life. (See Chapter 6.)
• The right to borrow and use, in certain circumstances, a literary or artistic creation that is someone else's property. (See Chapter 6.)
• The right, sometimes, *not* to speak or reveal information given in confidence. (See Chapter 7.)
• The right to advertise or refuse to advertise products and services. (See Chapter 9.)
• The right to decide what controversies and content to include in a newspaper or on a radio or television station. (See Chapter 9.)
• And the right, as a student, to have constitutional rights as a citizen recognized in school. (See Chapter 10.)

Part three

Legal limitations. Freedoms of speech and of the press may be the bedrock of democracy, but these rights are not absolute. Courts continually weigh and balance one person's rights against another's, individual rights against society's. First Amendment rights are important to everyone and to the country, but we must recognize when and under what circumstances those freedoms may be denied.

Even constraints against censorship have exceptions. The U.S. Supreme Court said that when there is a demonstrable threat to national security, when speech would incite to violence or when expression is obscene, prior restraint is justified. (See Chapter 4.) There are other limits to freedom of expression:
• We may criticize someone, but if we have done so falsely and carelessly, we may be subject to monetary losses in a libel suit. (See Chapter 5.)
• If we have printed something of little news value and embarrassingly private about a person without permission, we face legal action. (See Chapter 6.)
• If the creation we have borrowed was used without permission and for monetary gain at the expense of the owner, we may be guilty of copyright infringement. (See Chapter 6.)
• We may have the right to remain silent, but if we have information that a judge believes is essential to serve justice, we may be told to testify—or else face a jail term or fine for contempt of court. (See Chapter 7.)
• If our speech is obscene, we lose some constitutional protection. (See Chapter 8.)
• If our radio or television programming is found not to be in the public's interests, we may lose our license to broadcast. (See Chapter 9.)
• Advertising legal products and services may not be banned, but may be regulated. (See Chapter 9.)
• And although students do have constitutional rights, the school is a special environment; thus, different rules apply to young people than to the public at large. This is further evidence of the relative strength of First Amendment freedoms. (See Chapters 8 and 10.)

Part four

Ethical limitations and responsibilities. What we have been given can be taken away. That truism appears whenever one looks closely at how the First Amendment is applied. Because citizens cannot afford the time and expense to go to court every time their freedoms are denied, judgment and discretion guide the exercise of First Amendment rights. The Constitution does not dictate behavior to journalists when common sense tells them there is much to lose by exploiting their freedoms unreasonably.

Some considerations and ethical questions should be discussed:
• Is damage to a person's reputation or invasion of someone's privacy always justified in pursuit of a news story, even though no law is broken—or only a minor offense has been committed? (See Chapter 6.)
• How is the public served through a reporter's strict adherence to a promise of confidentiality and refusal to reveal a news source? (See Chapter 7.)
• Is there ever justification for the use of four-letter words in a newspaper, television or radio story? (See Chapter 8.)
• How important is it that the media tell all sides of a story? Are there legal requirements to do so? (See Chapters 8 and 9.)
• Should a publication print controversial advertising—such as for abortion referral services or X-rated movies—even when there is no law against doing so? (See Chapter 8.)
• Should a publication ever create quotes to liven a story and make it more dramatic and effective? Is there anything legally wrong with doing so? (See Chapters 5 and 8.)

These questions can lead to discussing professional and personal responsibility, the merits and dangers of voluntary guidelines, codes of ethics and industry regulations.

The unit should conclude with a reexamination of how

societal interests and individual rights are weighed—and the risks involved in such balancing. For example, a country with a free press should be compared with a country where there is no such freedom of expression. The consequences of not censoring but allowing a journalist to say something reckless—and face punishment—must be balanced with the results of a censorship body empowered to halt speech it decides is reckless. How free should Americans be to say something unpopular, even damaging?

If students realize that there are no easy answers in reaching such decisions, concern about personal freedoms may replace complacency among tomorrow's adults.

Chapter 2

The First Amendment Alive

"What if they gave a war and nobody came?" was a popular anti-war poster in the late '60s. Not everyone found it amusing, of course. Many draft-age young people embraced it; others did not. In the 1980s, the slogan could be, "What if they closed your newspaper and nobody cared?" Who would identify with that? How would high school students react?

When 16-year-old Charles Reineke went to court in 1980 after school officials deleted a sports column in the student newspaper about the football team's losing season, a judge ruled that such censoring of protected material was unconstitutional. After the verdict, the president of the student body and more than 50 other students burned copies of the newspaper in front of the school to show their support for the administration.

Clearly, times and values change. George Gallup, Jr. reports that 60 percent of America's teenagers cannot associate the Bill of Rights with a free press and almost twice as many adults believe there should be more restrictions on the press than believed that 20 years ago. It is a sentiment that may well be fostered early among the young. A 1980 Department of Education study shows that high school seniors place money and success well above social justice on a list of personal priorities. In a call for more attention to educating about the First Amendment, Jean Otto, national chairman of the First Amendment Congress, said that: "A whole generation is growing up with no sense of what it means to be guaranteed individual rights."

American media have evolved from a repressive beginning to relative freedom today because of a belief that a restricted or licensed press does not serve the public. A press free of government restriction, and free to criticize and watch over elected officials, grew from the conviction that individual differences are valuable and that citizens are better served when they, as rational beings, can select and evaluate information and ideas for themselves.

Can one comprehend how the citizens of Nicaragua view "free speech"? *LaPrensa,* the only newspaper in Nicaragua that opposes the Sandinista government, has been closed by government censors at least seven times and so heavily censored that it did not publish 22 other times. Those who report negative news are arrested and accused of "counter-revolutionary activities."

American students who believe freedom of the press has come at the expense of respect for the individual need to hear what our country's founders and Supreme Court justices have said about the First Amendment. Students must realize that the same freedom of the press is guaranteed to every citizen; it gives them the right to be different, and not punished for being so.

While local, state and federal government may not legally deprive citizens of their constitutional rights, there clearly are ethical and legal constraints on the press. Freedom of expression is not permitted under all circumstances. In some cases, protection of individuals and of the interests and freedom of society as a whole may mean that some First Amendment freedoms must be tempered.

With the discussion questions and activities that follow, teachers should strive to make students aware and proud of the freedoms they have. Students should be encouraged to use those rights intelligently, fairly and effectively. They should be urged to cherish and to share individual differences and beliefs.

Questions

The First Amendment

1. What does a free press contribute in a democratic society? Who benefits? How and why?

(This discussion should touch on the students' daily lives both at school and at home. The adversary relationship of the press and government should be mentioned—particularly, how government officials and the general public benefit by knowing that there is a vigilant, uninhibited press.)

2. If you could spend a month as the editor of your local newspaper, how would your editorial page reflect your feelings about freedom of speech and of the press?

(Through its editorials, a newspaper lets the public know what its editors believe. If your newspaper takes positions on issues, offers opinions on topics of interest and concern to its readers, and provides an opportunity for readers to react through letters to the editor, the newspaper will be exercising freedom of the press in a way that will benefit the public. And by opening its pages to letters from its readers, it is demonstrating responsibility while allowing members of the public to exercise their free speech rights, too.)

3. Compare freedom of speech and of the press in the United States with freedom of expression in a more

repressive country such as Iran, Nicaragua, Ghana, or the Soviet Union by discussing how public officials might respond to the following:

A. An editorial criticizing government wiretapping of citizens' homes.

B. A speech in a city park advocating more openness in government . . : or a change in the controlling party's leadership.

C. A news story that reports results of a public opinion poll questioning governmental policies or actions.

(To reveal the value of our constitutional rights, make the link between democracy and freedom of the press in the United States, and then compare our press system with the more restricted press in other countries. This may be a good time to introduce the risks that must be taken in having a free press and question whether those risks are worthwhile. Acknowledge the more volatile governments in other countries and have students identify reasons for those governments maintaining tight control of the press. Discuss how the public may both profit and suffer as a result of that control.)

4. Suppose the local League of Women Voters is sponsoring a public meeting of all candidates for school board two weeks before the election. After the meeting has been announced, and just before filing for board seats closes, a former teacher who was dismissed after speaking out in favor of legalizing marijuana announces his candidacy. There is pressure either to cancel the public forum or refuse to permit the former teacher to participate. Write an editorial or take one position in a class debate on this issue. Would you publish a letter to the editor in which the teacher/candidate angrily presents his position?

(This discussion should make several important points about the First Amendment. First, the First Amendment applies even to those persons or publications advocating ideas that we oppose, and is not to be denied merely because the ideas are unpopular. Second, it may be unfair or even improper to do so, but the League of Women Voters, as a private organization and not a branch of the government, is not required to offer everyone an equal chance to be heard. Third, circumstances would be different if a local television or radio station sponsored this debate. There are obligations of fairness that apply to the broadcast media that do not apply to newspapers or private organizations.)

5. Would your high school newspaper be able to publish an editorial on the above controversy? Why or why not?

(The U.S. Supreme Court case of *Tinker v. Des Moines Independent School District* (see summary and citation in Related Court Cases in Appendix) shows that high school students have constitutional rights, too. A discussion of students' right to peaceably wear armbands to express their beliefs will show how the school setting brings with it a special set of limitations, but places a burden on school officials who want to deny free speech to its students. This case is best discussed within the context of censorship or prior restraint—in Chapter 3—but is important because it acknowledges the value of free speech rights for students.)

6. The worksheet/survey that follows should be distributed as you begin discussion of the First Amendment. The survey should generate interest in free speech questions and let students discover how they and their classmates feel about these issues. Students should not be told they are "right" or "wrong" on an issue. Rather than have students discuss individual responses, it is better to collect the worksheets (unsigned, of course), summarize or average the responses and discuss class results. Discussion should reveal inconsistencies in some students' responses from one question to another. The tendency of many citizens to support a concept in its abstract form or in a faraway locale, but oppose it in immediate, concrete application also should come out in the discussion.

As an alternate to class discussion of the survey questions, you might administer some of the questions on the attitude survey at the beginning of the unit, and then at the end offer the others. In this way you may be able to gauge the degree to which students have modified their attitudes about free speech/free press principles.

Activities

The First Amendment

1. Pose a hypothetical question (or a series of questions) to the class as a whole concerning freedom of speech. Topics may include:

- A person's right to learn what the government or the school has on file about him or her (for more on the question of access to information, see Chapter 4).
- A citizen's right to speak in public about an unpopular or embarrassing topic (it is hard to legally stop such speech, as Chapter 4 shows).
- A student's right to distribute a student-produced alternative newspaper inside the school (as Chapter 10 shows, this is protected, just as it would be for the sanctioned student newspaper).
- A local newspaper staff's right to print any four-letter

word it wants to (this is legally permissible, but inappropriate and risky, see Chapter 8).
- The principal's or even the adviser's censorship of material that might embarrass the school (chapter 10 looks at this present, but limited, right).

2. Conduct a survey of students and teachers and use the results for class discussion of legal awareness and understanding. If your survey covers several topics, try to identify issues or constitutional rights that need attention and discuss your conclusions and recommendations with editors of student and local newspapers and with appropriate teachers.

(This activity can effectively whet students' appetites for answers, but also could come at the end of the unit and put the issues discussed into a sobering perspective. Even if time does not permit you to conduct this survey, preparing the hypothetical situations and asking several authorities to talk to your class about them would be worthwhile. Each student, or small groups of students, could contact a different authority and report to the class; a panel discussion could be arranged for the class; or students could write to national authorities for their opinions on these issues.)

Worksheet

An attitude survey

Directions: Indicate your agreement or disagreement with the following statements. Use the following scale:

1 = Agree strongly
2 = Agree somewhat
3 = Uncertain
4 = Disagree somewhat
5 = Disagree strongly

A. Freedom of speech and freedom of the press are necessary in a democracy.	1	2	3	4	5
B. One of the most important roles of the news media is to be a watchdog of government.	1	2	3	4	5
C. If the news media do not report events in a responsible way, government should limit press freedoms.	1	2	3	4	5
D. "Students Against Nuclear Disarmament" should be allowed a parade permit for a march in our community.	1	2	3	4	5
E. Newspapers should be required to print letters to the editor dealing with controversial topics.	1	2	3	4	5
F. Journalists should be required to reveal a confidential source if the information might lead to the arrest of a fugitive.	1	2	3	4	5
G. A person's right to a fair trial is a legitimate reason for restricting the flow of information to the press during a trial.	1	2	3	4	5
H. Journalists should be given special rights to protect them while reporting about government and politicians.	1	2	3	4	5
I. Because students are not yet adults, student journalists should not have the same rights as professional journalists.	1	2	3	4	5

J. Students should not be allowed to wear swastikas in a school where 40 percent of the student body is Jewish.	1	2	3	4	5
K. Newspapers should not be permitted to print statements so intimate that they invade a person's privacy or damage a person's reputation.	1	2	3	4	5
L. The broadcast media should have the same freedoms of speech and press that the print media enjoy.	1	2	3	4	5
M. State and local governments should establish media review boards to monitor media content and license newspapers.	1	2	3	4	5

Chapter 3

The Constitution and the Courts

As Americans, we have some 85 different rights guaranteed to us through our Constitution and its 26 amendments. Almost 200 years have passed since this nation's first Congress limited the government's authority over U.S. citizens by agreeing that: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for redress."

We are protected by, among others, a Fifth Amendment that requires the federal government to follow reasonable due process procedures before limiting a person's liberty, a Sixth Amendment that calls for public trials and a Fourteenth Amendment that today prohibits governmental agencies or officials at the federal, state, county or municipal levels from interfering with specific First Amendment freedoms. Any limitation of these rights must also provide the citizen with clear, complete and reasonable due process that includes an appeals process.

States offer their citizens additional protection. Every state constitution has a free speech/press clause. Some of these state protections provide stronger guarantees than the First Amendment.

But since the First Amendment and the Bill of Rights were ratified in 1791, and throughout the years state constitutions were being drafted and adopted, Americans have discovered countless ways and reasons to limit such freedoms.

Many times judges and public officials distinguish one administrative or judicial decision from another. The Congress, state legislatures and city councils try to balance the rights of individual citizens with the responsibility of government to act on behalf of all citizens. The results sometimes strain the boundaries of the First Amendment, and then the courts and their judges are asked to resolve the conflict. Consequently, "the law" in this country comes from our judges as well as from our elected officials.

Our democracy's strength comes in part from give-and-take within the executive, legislative, and judicial branches of government. While it is the legislative branch's job to make laws, the judicial branch's role is to interpret these laws and arbitrate differences of opinion or interpretation. When a city, state or federal body makes a law that conflicts with the Constitution, a judge must help resolve the conflict. But the courts are essentially passive—not resolving conflicts or addressing inequities until called upon by the public.

And when we go to court to resolve a difference, we begin at the trial court level. It is the judge's job here to sort out the facts and properly apply the law to those facts. Whether in a state court or the federal district court, the job is not to establish legal precedent but to decide the case within the context of existing law or custom. The higher, or appellate, courts set legal precedents. The district court's ruling is not binding on any other court or in any other case.

These courts deal with the facts at hand. If the question is a federal one—for example, involving constitutional rights—the decision may be sought from a federal district court judge. Every state has at least one such court. Most First Amendment conflicts come through the federal courts for this reason, but because there are state laws that deal with libel, invasion of privacy, protection of confidential sources and access to public records or public meetings, state courts may also hear cases that deal with federal questions.

It is important to know something about the ranking of the courts, both within your state and in the federal system. More and more people are going to court these days, resulting in a clogged judicial system. This has brought increased pressure on judges to follow legal precedents set by higher courts. Within the state, that means more attention to the state supreme court, or to an appellate court if there is one. In the federal courts, that means greater attention to the U.S. courts of appeals.

Twelve circuit courts hear appeals from the federal district courts and provide the intermediate step between the trial level and the highest legal authority in the country—the U.S. Supreme Court. Each circuit covers from three to seven states, except the District of Columbia, which is itself a circuit. Usually, three judges within each circuit's pool of judges hear and rule on a case.

Because of increasing demands on the U.S. Supreme Court, a court of appeals is the highest court to hear more than 95 percent of the federal cases. Just as rulings from a state's highest court are binding on all lower courts in that state, rulings from U.S. courts of appeals are binding on all

lower federal courts within that circuit. Judges in other circuits, however, are not bound by any district or appeals court ruling in another circuit.

Decisions from state high courts and U.S. courts of appeals may be appealed to the U.S. Supreme Court. Decisions from the Supreme Court are binding on all lower courts in the country—state or federal. This does not mean, of course, that lower court decisions will reach the Supreme Court. Many of the nine Supreme Court justices have complained recently of the increasing number of cases brought before them. Chief Justice Warren Burger complains that the Court is already straining to rule on the 150 or so cases it hears every year. The 151 written opinions the Supreme Court issued during the 1983-84 term is more than twice as many as were issued in 1969—and the number of appeals to the Supreme Court has reached 5,300 a year.

This workload is forcing the Supreme Court to let many lower court decisions stand and is calling more attention to the need for lower court judges to follow U.S. Supreme Court precedents to decrease the number of appeals.

Judges and justices are human, of course, and also are influenced by circumstances in their communities or jurisdictions. Judges follow the lead of higher courts to a remarkable extent, and as citizens we benefit because we can pattern our behavior according to guidelines from legal precedents.

The independence of a strong judiciary also benefits all citizens. Federal judges at the district, appellate and Supreme Court levels are appointed for life. This is so they will not court political favor or fear pressure from any group or person. This system supports the belief that those federal judges empowered with protecting the constitutional rights of Americans have the strongest legal position available from which to defend each citizen against infringement of those basic liberties.

Questions

The Courts

1. Under what circumstances is it useful to look to the courts and to judges for support when freedom of speech or of the press is denied? For example, is there any way to predict your success if you ask a state court judge to stop the city council from meeting in private, or if you ask a federal court to prevent your suspension from school for handing out religious pamphlets in the lunchroom?

(The value of legal precedents and the amount of guidance they provide are important concepts. Students should know that U.S. Supreme Court decisions are binding on all courts in the country, U.S. courts of appeals decisions are binding on all federal courts in the respective circuits and U.S. district court decisions are persuasive but not binding in any other federal court case.

Likewise, it is important that students know the structure of their state court system so that state court decisions on free speech issues related to state law can be assessed in terms of how decisions are binding on other state courts.

In the above examples, the way courts have ruled on your state's open meetings law should be checked, since interpretations vary.)

2. What makes it hard to predict how a judge will rule in a specific case, such as one of those mentioned above?

(Beyond the fact that judges are human, and not immune to societal pressures and community norms, other factors make it risky to predict a ruling solely on the basis of legal precedents. A court might modify an earlier position or change direction altogether—as happened in 1974 when, in the libel case of *Gertz v. Robert Welch Inc.*, the U.S. Supreme Court modified its 1971 ruling and held that private persons do have more protection from libel than public persons.

More likely, a judge in district court or in a low state court may simply rule that the circumstances in the immediate case are different from those in the precedent-setting case, thereby justifying a different ruling. And when there is no clear constitutional question or law involved—local, state or federal—the "common law" or judge-made law may be applied. When common law is applied, the philosophy and rulings of judges in earlier decisions are used for guidance. The risk comes from not knowing which rulings or philosophy a judge might apply in the immediate case being heard.)

3. It is costly and time consuming to use the courts to resolve differences, so when the principal tells Bill that he may not distribute religious pamphlets in the lunchroom, Bill should first consider nonjudicial remedies. What other tools might he—or a journalist seeking access to public records—use to have relevant rights acknowledged and respected without going to court?

(This discussion could go in several directions. Fair and responsible behavior can short-circuit free speech restrictions meant to harass or punish the press and citizens. Pre-established guidelines and codes of ethics, clearly defined for all and shared with the public, may result in greater public confidence, mutual respect and more tolerance by those involved. Skills in negotiations

and human relations can help resolve differences before they result either in depriving individual freedoms or legal action. The alternative to resolving conflict is either loss of freedom or a court case that may take years and cost thousands of dollars.)

Activities

The Courts

1. Invite a judge, a local attorney or legal counsel for an area newspaper or television station to speak with the c ass. Any—or all—could address the above discussion questions, assess freedoms accorded the press in their regions, and offer interpretations of what freedoms of speech and of the press mean. What these speakers think about freedom of student media also would be interesting. (However, most attorneys have relatively little training or experience in this area, since there have been so few court cases.)

2. Visit a court.

(A field trip may be the first time students see a courtroom; discussion in the judge's chambers may prove more meaningful than a classroom visit. The field trip could be linked to a reporting unit; too, with students asked to cover a judicial proceeding or talk to a judge or lawyer after observing them in action.)

3. Role play a legal proceeding in class, based on the circumstances of a local controversy or a free speech issue involving the press.

(Recent issues of *Editor and Publisher, News Media and the Law,* or the *Student Press Law Center Report* will provide examples if your local newspaper does not. Many of the Related Court Cases listed at the back of this book would also be appropriate for this exercise. You may wish to save this activity until you have discussed a specific issue—*e.g.,* censorship in the name of national security (Chapter 4) or damage to a person's reputation (Chapter 5). Students could profit by gathering support from related cases and offering arguments to a judge—and perhaps even to a jury of students. The level of sophistication this exercise takes will depend on the extent to which the courts and the legal process are discussed in class.)

4. Check with your state's highest court (usually the supreme court) or state or local bar associations for pamphlets or other materials that explain the state's judicial structure. After studying the material, have a question-and-answer session with a local or state judge.

(If it can be arranged, a phone hookup through a public address system can allow students to interview guests who cannot get to your classroom but are willing to answer questions by phone from their offices.)

Worksheet

Directions: After you have read about the situation described below, answer the questions that follow.

You and 27 other students have formed The Silent Majority—an organization favoring a moment of silence at the start of each school day. You have prepared a brochure explaining the group's goals. You want to hand out the brochures in the school, and have asked for permission to hold a rally on the football field. You also want to rally public support for your cause, and have asked the city council for permission to rent the civic center. School officials, concerned about separation of church and state, are reluctant to let you distribute material or conduct a rally on school grounds. City officials are hesitating because they don't want to allow students to rent the civic center. You have to decide what to do now.

1. What gives the city officials the authority to act, and what document(s) should guide their actions?

2. On what basis, and using what document, would a judge rule if you took this issue to court?

3. Would this legal action likely go to federal court or to state court?

4. To which court could you appeal next if you lose in the first ruling?

Answers

1. A city ordinance may include guidelines for using the civic center. The U.S. Constitution restricts public officials from arbitrary decisions that deny only certain citizens their rights.

2. A federal judge would determine whether the city ordinance or the basis of local officials' action was consistent with the Constitution and rulings by the U.S. Supreme Court and the court of appeals on this issue.

3. If the students believe that their constitutional rights of free speech have been violated, a federal question is involved and the case would likely be heard in federal court.

4. Federal cases are appealed to the U.S. court of appeals . . . and then to the U.S. Supreme Court.

Chapter 4

Free Expression vs. Government Authority

Our constitutional freedoms come with strings attached. First of all, our rights come indirectly, through a document that speaks to government and tells it not to stop citizens from exercising certain liberties. But those early Americans who freed us to speak also saw the need for a representative and responsible government. Officials charged with keeping the peace and ruling on behalf of all citizens were given duties and authority, too.

While governmental authority has not been absolute, neither has the tension from balancing interests of government and the press been harmful. Students should realize that it often is easier for an arm of government to curtail individual expression, whether by a newspaper reporter, television commentator or citizen, than it is for an individual or a news medium to stop a government official or agency that may not be acting in the public's interests. Government may reasonably restrict expression that poses a real, immediate, serious danger to life or property. However, this does not negate the value to citizens when the press is free enough to perform the function of watchdog of the government.

The value of an uncensored press that can criticize came to America from the thinking of such legal scholars as William Blackstone. He was an 18th century law professor who saw the need to punish speech that threatened the peace and order of society. But he added that: "The liberty of the press is indeed essential to the nature of a free state," and argued against any form of censorship or prior restraint.

This philosophy has never been too popular, especially among those who have been stung by an incorrect or poorly written news story. The government has been particularly fearful of an uncensored press during war. Wartime alien and sedition laws that punish criticism of the government did not technically censor the press. But these laws, the 1917 Espionage Act, and the 1918 Sedition Act included such severe punishments (a fine of $10,000 and up to 20 years in prison) that the threat effectively kept most people from commenting on government.

Censorship, or prior restraint, takes many forms and does not come only from the federal government. School boards, city councils, state legislatures, police chiefs, film review boards and even judges have censored the press—or tried to. A 1984 exhibition at the New York Public Library, "Censorship: 500 Years of Conflict," revealed that most government censorship has focused on critics of government.

The public and journalists today have the Constitution on their side, thanks to two U.S. Supreme Court cases ruled on more than 50 years ago. In the first, *Gitlow v. United States,* decided in 1925, the Court held that a state could not deny its citizens First Amendment rights protected by the U.S. Constitution. It was six years before a state's curtailment of this right was brought before the Supreme Court, but in restating its position, the Court struck a blow against state censorship.

Hundreds of times since 1931, journalists have referred to *Near v. Minnesota* when faced with attempts to stop publication. Every citizen won in that case when the Supreme Court held that even an irritating newspaper that spread scandalous rumors and reflected the bigotry of its editor could not be denied the right to criticize elected governmental officials. Editor Jay Near used his *Saturday Press* to attack corrupt Minneapolis politicians, often in anti-semitic terms and with unsupported accusations. For example, when a friend was shot and law enforcement seemed to look the other way rather than arrest an influential but shady character known as Big Mose Barnett, Jay Near used the *Saturday Press* to proclaim:

> *I am not taking orders from men of Barnett faith. . . . There have been too many men in this city and especially those in official life, who* have *been taking orders and suggestions from* Jew gangsters, *therefore we* have *Jew Gangsters practically ruling Minneapolis.*
>
> *It was buzzards of the Barnett stripe who shot down my buddy . . . It is Jew thugs who have 'pulled' practically every robbery in this city.*

As one might expect, many Minnesotans breathed a collective sigh of relief when the state courts upheld an injunction that labeled the *Saturday Press* a "public nuisance" and stopped it from publishing.

But the U.S. Supreme Court objected. Punish if you must, the Supreme Court said, but the Constitution is clear in its prohibition against prior restraint for criticism of official misconduct. In the words of Chief Justice Hughes:

> *The fact that the liberty of the press may be abused by miscreant purveyors of scandal does*

not make any the less necessary the immunity of the press from previous restraint in dealing with official misconduct. Subsequent punishment for such abuses as may exist is the appropriate remedy consistent with constitutional privilege.

The decision was close, 5 to 4, and the majority said that there are times when censorship is justified: when the material is obscene, is a threat to national security during time of war or spurs people to acts of violence.

The government is free to regulate expression, of course, but even then faces limitations. Protected speech must be regulated reasonably, in an evenhanded way. If the message does not fall into one of the three categories of prohibited expression listed above, its content may justify only regulation. The authority restricting the expression must have a significant reason and alternatives for expression must be available to the speaker. Regulation should be discussed in terms of time, place and manner of expression—not its content. Dissatisfaction with the substance of a message is no legal justification for censorship.

Despite legislation, new faces on the Supreme Court and subsequent court rulings, *Near v. Minnesota* remains a strong legal tool against press censorship. Its message—that censorship is not constitutional unless certain circumstances exist—put the burden on the censor, not on the speaker. That protection aids the press and public faced with attempts to silence them.

The U.S. Supreme Court has ruled that the Constitution may protect the press and citizens who want to publish what they know, but the First Amendment does not guarantee anyone the right to obtain particular information. As Chief Justice Burger wrote in the 1976 case of *KQED v. Houchins*: "This Court has never intimated a First Amendment guarantee of a right of access to all sources of information within government control."

The public and journalists have responded by turning to their elected officials for support. Although the government is not able to prevent dissemination of information that has been made public, federal and state statutes are often used to extract information that the government may try to keep from the public's view. The four aids to the press and public in this situation are the Freedom of Information Act and the Government in the Sunshine Act for federal agencies and open records and open meetings laws for state and local bodies.

Technology has made it easier and cheaper to collect and store data. Some information the government collects may embarrass or unsettle certain public officials. At such times, it is easiest to consider the material secret and keep it from the public. But secrecy breeds suspicion, and the press—as stand-in for citizens—argues that the public's business should be open to public scrutiny to keep the decisionmakers alert and honest, and to increase public confidence in the system.

This philosophy led to the Freedom of Information Act in 1966. It originally called in broad terms for access to the records of administrative agencies within the federal government. After it was amended in the mid-1970s, documents were to be released unless they fell into one of nine exemptions—such as internal memos, files of some law enforcement investigations or a corporation's trade secrets. In recent years, the media have argued strongly against congressional efforts to broaden the exemptions and thus allow more information to be kept secret.

This act prevented the government from keeping some public records from the public. In 1976, Congress passed the Government in the Sunshine Act that prevented approximately 50 public agencies from closing their meetings. The reasoning was similar: the public's business should be conducted in public. The Federal Communications Commission, which regulates the broadcast industry, and the Federal Trade Comm sion, which guides advertisers, are two such agencies w e meetings are open under this law.

State legislation, often with more immediate protection, keeps government records and meetings before the public. Similar in philosophy, and often in form, to the federal regulations, these statutes vary from state to state. Almost all states have both types of statutes, but they are not equally useful, either because of general exceptions or vague requirements. In some states, "formal" meetings must be open but "informal" meetings need not. Most state open meeting laws specify that the public must be told of meetings in advance, and many statutes spell out legal action and penalties that face violators.

Where the Constitution does not prevent the government from keeping information from the press and public, state and federal lawmakers have. Although the Supreme Court has said several times that journalists deserve no special treatment not given to any other citizen, the government has no more power today than it had in 1931 when Jay Near won his battle against censorship of his *Saturday Press*. It is no more justified today to deny journalists the right to print what the law says they may acquire and convey to the public they serve.

Questions

Government Authority

1. What limits, if any, should be placed on the contents of newspapers—specifically in terms of editorials, letters to the editor, news stories, columns and feature stories? How would or should such limitations be enforced?

(This question can operate on two levels. On one, it can serve as a gauge to how well you conveyed the points of the chapter. "Content limits" imposed on the newspaper are means of censorship. Unless the content falls into one of the three major exceptions discussed in *Near v. Minnesota* above, there cannot be any legal content limits. But on the second level of discussion, this may be a good time to discuss why what the press may print is not the same as what the press should print. There are ethical considerations that affect not only the effectiveness of what is printed but also the likelihood of attempts to harass or harness an unpopular press.)

2. What benefits come from the media's freedom to criticize government? What dangers result from such criticism?

(This is a corollary to the above question. Discussion of one should logically lead to the next. Both summarize points made in the preceding discussion.)

3. In spring of 1984, 93 students who signed a petition at a New Jersey high school were given two-day suspensions. The petition protested punishment given to several students who were accused of having alcohol in their hotel rooms while on a class trip. Petitioners said that because teachers also were drinking on the trip, it was unfair to punish only the students. School officials said the petition was "baseless," made false charges against teachers, and, because of "reckless intent," could be confiscated and the petitioners punished. How do the prior restraint guidelines discussed in this chapter apply to the right to petition?

(As with censorship of other printed material, government officials, including administrators of public schools, may not halt expression that is merely embarrassing or discomforting. However, school officials have the added authority—not available to other elected officials—to stop the distribution of libelous material. You may wish to delay this discussion until libel is discussed, or use this question as a transition to libel. The burden remains on the censor, however, and the school officials must be able to prove the petition has content that is libelous, obscene, or that it imminently disrupts the educational process. A corollary concern is the students' right to due process—a right to appeal the suspensions to the superintendent or school board and be represented by an attorney.)

4. What is "threat to national security" and is the public ever served by the publication of material said to be "top secret"?

(The subjective element of "mood of the times" can be introduced here. You might discuss how a world crisis may prompt the courts to give government more leeway in interpreting "national security" as a justification for censorship. The circumstances of *The Progressive* magazine wanting to print legally obtained information about the creation of a nuclear weapon, and the government's attempts to stop publication, would be a provocative way to show that it is hard to set in stone what may and may not be printed and under what conditions.

The U.S. Supreme Court in 1971 said that the government had not sufficiently shown that publication of the Pentagon Papers—detailing how the United States got involved in the Vietnam War—would damage national security.

But when *The Progressive* eight years later said it would publish an article on how to make a hydrogen bomb, the government again stepped in. Although all information in the article was available to the public, the government argued that the how-to of bomb construction was a more real threat than historical data on the Vietnam War. Besides, the Atomic Energy Act expressly prohibits disclosing such information. Although it won at the district court level, the government decided not to seek a permanent injunction against *The Progressive* because other newspapers published similar information while the case was being argued. *The Progressive* immediately published its article, and the Wisconsin district court ruling is not binding on any other federal court. Journalists—and your students—are left to speculate on what may have happened had this case gone to the U.S. Supreme Court . . . and the impact of a Court ruling against the magazine.)

5. What ethical considerations may affect the willingness of school officials to open all school board deliberations or school records to the public, the press or the student newspaper staff?

(Consider personnel deliberations and records, usually closed by law to public scrutiny, and the need to balance the public's right to know and the individual's right to privacy. This is another reminder that no freedom is absolute. The potential loss of public confidence and support in the face of reckless disregard for protection of the individual must be considered.)

Activities

Government Authority

1. Examine today's newspaper and watch a network or local television news show. Determine which news stories would likely be prohibited if the federal, state and local governments had the power to censor stories each found objectionable. How would the stories have to be changed in order to be acceptable?

(This may lead to a discussion of who would decide what is objectionable, how such decisions would be made and what mechanism would be needed to enforce such decisions.)

2. Role play the following: The student council wants to establish a system whereby it would be allowed to read all copy for the student newspaper before publication and have the power to "edit" copy that does not show the school in a positive way. Moreover, the student council wants to conduct a closed meeting to discuss the system and does not want anyone—including representatives of the student newspaper—to attend. Several of the newspaper's editors have an appointment with the principal, the student council president and the council's adviser to discuss the closed meeting and the review proposal. Re-enact the meeting.

3. Investigate your state's open meetings and open records laws. If there are such laws, what do they require? Are there limitations? Penalties?

4. Survey leaders of the local school board and city council and your state legislators to determine their feelings about open meetings—and their awareness of the state open meetings law. What do local reporters think of them? Are the laws adhered to in your community? If no such laws exist, ask your state legislators why not.

5. Debate the following: The media and the American public were deprived of their right to know when journalists were barred from entering Grenada and reporting on U.S. military operations there.

(This October 1983 incident might be recent enough to stir student interest. The government's concern with the safety of Americans in Grenada and the public's right to an independent account of the military activities must be considered. From a legal perspective, consider the Supreme Court's conclusion that the media are entitled to no special privileges not accorded to the general public. In this instance, was denial of public—and media—access detrimental to government? The media? The American public? Would such government action be justified during other military maneuvers? Events pertaining to barring journalists from Grenada were heavily reported by the media. For an excellent discussion, see "Grenada: Free Press Under Fire," a 20-page collection of articles available from the Newspaper in Education Department of Newsday, Long Island, New York.)

Worksheet

Directions: Complete the following in the spaces provided below.

1. Because the First Amendment says, "Congress shall make no law . . . abridging the freedom of speech, or of the press. . ." judges have ruled that these rights deserve absolute protection.

   A. Is this statement true?

   B. Why or why not?

2. **Fill in the blank.** Many news executives believe that, as the so-called "fourth branch of government," the media are expected to serve the public as a _____ of government.

3. **Choose the correct answer.** The First Amendment is meant to protect:
   A. The government from the reckless behavior of individuals.
   B. Individuals from unjust attacks by other individuals.
   C. Powerless society from the manipulation of rich and powerful individuals.
   D. Individuals from unjust restrictions by government.

4. State laws requiring open meetings and open records help journalists do their jobs. This is due in part to what the Supreme Court and judges have said—that journalists deserve special treatment in performing their duties.

   A. Is this statement true?

   B. Why or why not?

5. Prior restraint of the professional media is allowed only if the government can show that the censored material is one of three types of unprotected expression. What are these three circumstances or types of speech?

6. You are a reporter for an area daily newspaper. A source in the governor's office has given you a "confidential memo" outlining an elaborate reapportionment plan that, through redistricting, would reduce the size of the legislature and cut expenditures. When you contact the governor's office, an aide says that the proposal is in its early stages and publication now would endanger passage of this effort to save the taxpayers up to half a million dollars a year in taxes.

A. What arguments favor delaying publication?

B. What arguments favor immediate publication?

Answers

1. No. The courts and judges regularly balance the rights of individuals and the rights of society, an individual's right of free expression and the government's right to regulate speech and behavior.

2. Watchdog or monitor

3. D. The First Amendment protects personal liberties from government infringement.

4. No. These laws allow all citizens access to government information that may affect them. The courts repeatedly have said that journalists are not entitled to any constitutional protection not afforded to other citizens.

5. Material may be restrained if it is: (A) a threat to national security, (B) obscene or (C) imminently likely to incite a breach of the peace.

6. Publication of this material could not be stopped using the legal criteria listed above. Arguments likely would focus on the public's need to know what its elected officials are doing, and whether the public has to know now or would not be better served by withholding the information.

Libel—Injury to Reputation

America has thrived in the glow of a philosophy that divergent views are to be cherished and freedom of expression nurtured. But even the most ardent supporters of free speech acknowledge that the reputation of individuals deserves some protection, including some occasions that limit expression. Those who are unable to prevent criticism may have a right to strike back when they are unjustly hurt by what journalists or others publish. For this reason, each state provides its citizens with an avenue for civil lawsuits and monetary compensation if their reputations are damaged without legal justification.

Libel is one such example. With more people suing one another, more newspapers defending themselves in libel suits and—in about 85 percent of the cases—juries awarding large amounts of money to injured citizens, journalists are properly wary of stories that may hurt someone's reputation. In fact, some experts now worry that the size of recent libel awards may make editors and reporters—especially those at smaller newspapers—reluctant to undertake legitimate investigations.

Everyone—not just journalists—should know how state lawmakers have defined libel, how federal and state courts have interpreted it, what defenses are available and when and how they apply if a libel suit is filed.

Slander is spoken harm, while libel is written or visual harm, but because most of what we hear on television and radio comes from written scripts, libel laws usually apply to both print and broadcast media. More than careful writing is needed, because a cartoon, a photograph, a headline or page layout can lead to a libel case just as surely as a news story, an editorial, a letter to the editor or an advertisement.

The initial burden in a civil libel suit is on the person who claims to have been harmed. Such a person must show that:

1. What was communicated falsely ridiculed or scorned the person to the extent that he or she lost the respect of someone else and suffered financial loss. Sometimes a word such as "crook" or "drunk" is libelous regardless of the circumstances. At other times, the context may be important.

2. The person harmed is recognizable, either by name or by some other means of identification.

3. At least one other person has seen or heard the harmful information.

4. The person who made the statement was to some extent negligent or reckless.

This last burden on the accuser shows why a person must know state law and judicial rulings. No one can win a libel suit today without showing some fault by the writer. But the decision of whether a libeled person has to show that a journalist, for example, was "reckless" or was merely "negligent" is up to state lawmakers and state judges.

Once this initial proof is established, the burden shifts to the accused, or the defendant, who must use a libel defense that satisfies the judge and jury. Generally it is easier for media attorneys to defend against a libel suit brought by a public official or figure, but in all cases one of the following defenses is usually used:

1. *Truth.* This absolute defense is the best bet *if* the harmful statement can be proven. Trouble arises when words like "immoral" or "incompetent" are used and jurors have different interpretations of such terms. An accurately reprinted but defamatory statement made by a third party also is not protected as "truth," and often is actionable as libel. To use the defense of truth, the defendant must prove the truth of what was printed or broadcast.

2. *Qualified privilege.* Information that is part of a public record is privileged. The witness testifying in court, the legislator arguing an issue in the state house and the citizen filing a lawsuit against a neighbor all have absolute protection from libel charges. The person who reports on these has qualified privilege, which means that fair, accurate stories that come from a courtroom, the Senate chambers or the clerk of court's records may include libelous statements without fear of punishment. Which records are privileged often depends on state law. Fairness means that the person who decides to write about a trial, for example, may not report only the damaging statements of the prosecution.

3. *Fair comment and criticism.* Because there is no such thing as a false opinion, reasonably supported opinions about the performance of a public official or a public figure are protected. Officials from the school superintendent to the mayor or governor and prominent figures from baseball players to actors to astronauts have thrust themselves before the public. Although their public lives are open to scrutiny, though, their private lives are not. The writer is left to unravel where one's public life ends and private life begins. Misstatements of fact, not

opinion, are unprotected, however. Saying "The mayor is inefficient" is protected opinion; saying "The mayor is a thief" is not protected opinion.

4. *Lack of fault.* Journalists may cite evidence that they acted professionally, reasonably and carefully, using reliable sources. Before they do that, however, reporters may try to convince a jury that the accuser is a public figure—who, because of that status, has a harder burden of proof to meet. The distinction between private persons and public figures and officials is important.

Private individuals will look to state law to define how much fault they will have to prove to win their case. Public figures and officials, however, must abide by constitutional guidelines set down by the U.S. Supreme Court. If they are to win a libel case, public figures must show that the media acted recklessly—with knowledge that the statement was false or with little concern about its accuracy.

Several other defenses may help. First is the *statute of limitations.* States set a certain time limit, usually one or two years following publication, after which a person may not file a libel suit. Another defense is *consent.* A person who agrees in advance that certain material may be published cannot later label the content libelous and sue. There is a right of *self-defense* when a person has been libeled and the attacker is in turn criticized in the media. A fair and reasonable defense is protected.

In addition to determining guilt or innocence, a jury may award monetary damages. If the person who has been libeled can show actual loss of money, those special damages will be awarded. General damages may be awarded to compensate for mental suffering. If the guilty party acted recklessly, the jury may award punitive damages.

The size of libel awards has increased dramatically. Since the first $1 million libel award in 1976, there have been more than 30 others. A recent study showed that 45 percent of libel awards exceeded $250,000 between 1980 and 1982—up from 17 percent between 1976 and 1980. By the end of 1984, the average libel award was $2 million. Although more than 70 percent of libel verdicts against the media have been reversed on appeal, some authorities argue that the trial ordeal has been costly, time-consuming and inhibiting, particularly for the smaller and more vulnerable media.

In more than 30 states, the media have a legal tool that keeps them from having to pay punitive damages. In a retraction, the publisher admits that the statement in question was wrong and apologizes for printing it. A retraction that is sincere, prominently displayed and printed as soon as a complaint is made is considered evidence that the writer and the publication did not act recklessly. Still, apologizing is not a complete defense and is certainly no assurance of success in court. Because of the uncertainties that exist, and because damaging or destroying a person's reputation—fairly or unfairly, legally or illegally—is not something to be proud of, the wise writer works hard to guard against unwarranted defamatory statements.

Questions

Libel

1. How does a retraction differ from a correction? Which is more important and why?

(A correction replaces false, usually nonlibelous information with accurate information. If a person has been libeled, a publication that gives prominent display to a correction and apology may be able to show that the error was unintentional. Evidence of lack of recklessness or negligence often will reduce the amount of damages an injured person can collect and may prevent public persons from winning a libel suit.)

2. A reporter overhears a high school baseball coach give such a tongue-lashing to one of his players that the youth is reduced to tears. The reporter relays the incident to the sports columnist, who writes a column criticizing the coach's apparent insensitivity and says that anyone with no more compassion than that should not be coaching. The editor tells the columnist to notify the coach before the item is printed. The coach says this is a private matter between himself and his player. He adds that he will try to stop the item from being printed, and that if he fails, he will sue for libel.

(A) Can he legally stop your local daily newspaper from running the item? Can publication in the school newspaper be stopped?

("No" to the first question; "maybe" to the second. The daily paper is responsible for what it prints and may have to pay damages if found guilty of libel, but potential libel is not a justification for censoring the professional media. A principal could stop a high school newspaper from printing a libelous statement, but would have to show that the statement was indefensible libel. Libel was used as partial justification for prior restraint of a student newspaper in New York. See *Frasca v. Andrews* in the Related Court Cases section.)

(B) What defense, if any, does the newspaper have to fight a libel suit?

(It can argue that the coach is a public figure insofar as his coaching is concerned. His coaching performance, therefore, is open to fair comment. If the opinion in the column is based on facts, the item probably is protected.)

(C) Is printing the item ethical, "responsible" journalism?

(This example probably cannot be discussed without mention of ethical factors. Such elements as the size of the community, the coach's record, the school's sports program and the reputation of the columnist all deserve consideration. These do not necessarily affect the legality of running the item—unless the report is slanted and not "fair" comment—but the factors certainly bear on a newspaper's decision to print it. Note that many things that legally may be printed or aired are not, because of ethical concerns.)

3. Local resident Kara Lott, in a letter to the editor, says that Mayor Gerry Mander should be impeached because he took bribes during the last year from local companies. Citizens who do not work for the mayor's impeachment are obviously hypocritical and as crooked as the mayor, Kara adds.

(A) Will the newspaper share the blame if a libel suit is filed or is the paper free of blame because it simply reprinted the letter?

(The newspaper may accept or reject any letter. By deciding to print Kara's, the newspaper assumes equal responsibility for what is printed.)

(B) Does the mayor have any legal basis for assuming he could win a libel suit?

(Yes. Gerry's performance as mayor may be criticized, but fair comment is not a defense when specific criminal allegations are made. Kara and the newspaper will have to prove that he took bribes or that official court records show that he did. Gerry also will have to show that the newspaper acted with actual malice—reckless disregard—in printing the letter.)

(C) Could an average citizen who did not support the mayor's impeachment claim this article libeled him by calling him "hypocritical" and "crooked" and thus win a libel suit?

(Probably not. The element of identification is lacking. There are too many citizens to suggest that the statement refers to any one person or small group.)

4. Assume that your local community newspaper reports that "the high grades received by this year's seniors are a result of an elaborate cheating ring that involves virtually the entire senior class." Could a member of your senior class win if a libel suit is filed?

(The size of the class is important here. If the class has 35 students and your community is small, identification is probable. The newspaper may be in trouble if it cannot prove what it says and any seniors are able to show that they suffered. If there are 380 seniors in a suburban or inner-city high school, the statement is not only too improbable to be believed, but also too sweeping to claim it identifies any one member of the class. In the latter instance, a libel case would be hard to win unless a student could demonstrate personal loss as a result of the statement.)

Activities

Libel

1. Locate examples of media content that potentially libel a person. Be prepared to discuss your examples and defend your reasoning. Consider whether the damaging report is defamatory under the law. Conclusions could be written or discussed in small groups.

(Students should be able to distinguish between material that they find distasteful or sensational and material that goes beyond news judgment to the point of harm to a person's reputation. The photographs of former Miss America Vanessa Williams in *Penthouse* magazine certainly damaged Miss Williams' reputation, and she can demonstrate loss as a result of publication. But this is a question of ethics, not libel.)

2. Find examples of how the media report crime stories responsibly so as to avoid libel suits. Ask a local reporter, editor or news director to share with the class ways in which the local media guard against libel.

3. Write a news story based on a fact sheet that includes potentially libelous statements.

(The following worksheet suggests some story ideas. Other examples: a crime story that refers to an arrested suspect as the "thief" or "rapist"; a personality story that quotes someone saying that so-and-so "never did a day of honest work in his life"; an accident story that quotes the dead person's father as saying, "My girl would be alive today if that doped up fool had stayed off the road." Help students realize that these statements are libelous because the reporter who writes these things has no legal defense.)

Worksheet

Directions: For each of the following, indicate whether the harmed person would win a libel suit against the writer/publisher. Then explain briefly in terms of the defense available—or lack of one.

1. A news story describes the arrest of local district attorney Merry Pason, who has been charged with drunken driving.

A. Will Merry win?

B. Why?

2. Carla Banderson is misidentified in a news story as the owner of an illegal gambling establishment recently closed by police. The person actually arrested was Darla Anderson.

A. Will Carla win?

B. Why?

3. The reviewer of community theater writes in the local paper that the latest production "reveals that director Jack Spratt has no apparent skill in either selecting appropriate plays or casting them."

A. Will Jack win?

B. Why?

4. A political columnist writes that Mayor Buster Gabb is "the laziest mayor the city has ever had."

A. Will Buster win?

B. Why?

5. Florence Windygale, in a printed letter to the editor, has accused the mayor of threatening to fire any of his employees who do not contribute money to his political campaign.

A. Will the mayor win?

B. Why?

6. The newspaper editorializes that: "Ninety percent of those getting welfare in this city are doing it illegally and cheating the hardworking taxpayer." Welfare recipient Marty McGood files a libel suit.

A. Will Marty win?

B. Why?

7. Car dealer Bruce Stringbean is quoted as saying, "We offer cars in a range of prices. We don't care about quality." Because of a typographical error, the word intended as "do" appears as "don't" in the story. The newspaper, when informed of the error, runs a retraction the next day.

A. Will Bruce win?

B. Why?

8. A copy editor, as a joke, inserts the quote "I never took a bribe I didn't like" in a news story about the chief of police. No other editor catches the "joke" and the quote is printed in the newspaper.

A. Will the police chief win?

B. Why?

9. An editorial says that: "Every legislator from this area supported the boost in social security benefits except Belinda Backbite. Senior citizens should remember this in next fall's election." Belinda points out that she did vote for the benefits, and threatens to sue.

A. Will Belinda win?

B. Why?

Answers

1. No, if this is an accurate report from public records.

2. Maybe, if she can show that the newspaper was negligent and she has evidence that she suffered as a result of the publication.

3. No. Assuming it was not malicious criticism, this is protected opinion expressed about the work of a public figure.

4. No. This, too, is protected under fair comment and criticism as opinion about the performance of a public official.

5. Probably, unless the newspaper can prove the statement is true. This is stated not as opinion, but as fact. That someone else said it in a letter does not absolve the newspaper of responsibility.

6. No. The group of welfare recipients is too large; identification cannot be established.

7. Probably not. The retraction suggests lack of malice, and Bruce would have to show that he or his business suffered.

8. Probably. The newspaper has no defense here. This is actual malice, and the police chief must show only that he suffered loss to his reputation.

9. Probably not. Belinda would have to show that the newspaper acted recklessly and that she was harmed. The fact that what was reported was inaccurate would not be enough for a public official to win.

Chapter 6

Protecting Mind and Matter: Privacy and Copyright

The tidal wave of information sweeping the country in the wake of technology's communications explosion threatens personal liberty. As it becomes easier to gather and transmit material to a ravenous public, it gets harder for citizens to insulate their personal lives from the unwanted eyes of others.

With help from the courts, Congress, and some state legislatures, individuals have acquired some protection for their solitude and their creative works. Privacy rights and copyright laws protect citizens from unauthorized and unwanted scrutiny by others. In the 1980s, both privacy and copyright protection are important to all citizens. They are dealt with together in this chapter to show students that copying a friend's computer video game instead of buying it violates someone's rights as much as secretly recording a telephone conversation or printing a private, embarrassing fact about a person.

Privacy

About 40 states protect their citizens' right to be let alone. The U.S. Supreme Court also has recognized a constitutional right of privacy. Comparisons often are made between libel and invasion of privacy because both harm individuals in similar ways. But there are important differences.

First, libel concerns your reputation, what others think of you. Privacy concerns your peace of mind, what goes on within you. The law gives journalists a good deal of latitude and protection in news gathering. But an offended party may more easily convince a court that mental suffering has occurred than demonstrate loss of reputation, which is required in a libel suit.

Content doesn't have to damage one's reputation, or be false, or even have been published or aired for courts to find there has been an invasion of privacy. The two best ways journalists guard against privacy threats are: (1) by being honest with their news sources and by getting their cooperation, and (2) by reporting on newsworthy events or persons. But privacy invasion still can occur in four ways:

Intrusion resembles trespassing in that the private domain of a person has been entered without permission. This is most likely to happen during newsgathering and may occur even if nothing is published or broadcast. For example, a photographer who took a picture in the hospital room of a woman suffering a rare illness was found guilty of intrusion. The woman had asked that her picture not be taken. The journalist's defense against charges of intrusion is consent.

Private facts involve publishing true but very personal and embarrassing information about a person. Journalists have two protections in this area. One defense comes from public record; the U.S. Supreme Court has said that personal information that was legally obtained from public records may be published.

A second, and more useful, defense is the broad definition courts have given to newsworthiness. In general, if information about someone is of significance or interest to the public, it likely will be considered newsworthy. When information becomes "too personal" is hard to predict. For example, including in a routine traffic accident story the irrelevant fact that the injured person is a homosexual, when few others know that fact, probably would be a privacy violation. However, when it was reported that Oliver Sipple, the man who thwarted an assassination attempt on former President Gerald Ford, was a homosexual, and his family did not know that before the report, a judge said that the report was not a privacy violation because the events surrounding Sipple's actions were newsworthy.

False light is knowingly or recklessly distorting a person's views or misrepresenting that person—even if the information is not negative or defamatory. In 1967, the U.S. Supreme Court gave constitutional protection to this area of privacy. The defenses—truth or the lack of actual malice/recklessness—invite comparisons with libel, but one important difference is that to win a false light suit, everyone, not just public officials or public figures, has to show that publication was reckless.

A magazine article implying that a movie and play represented an actual hostage situation, when in fact the fictionalized versions were a bit more violent, was found not to be a false light violation because the magazine had not been reckless. (See *Time, Inc. v. Hill.*) But a reporter who made up quotes and the physical description of a source who was not interviewed was found to have invaded the woman's privacy. Although nothing defamatory was reported, the story misrepresented facts and had done so intentionally. (See *Cantrell v. Forest City Publishing Co.*)

Appropriation concerns our name and likeness, which belong to us. If someone else uses either for personal gain without our permission, we have grounds for a privacy suit. Advertisers and ad sales people must be careful not to publish an advertisement that uses, without permission, a photo of someone shopping in a particular store. Recently, "right of publicity" also has protected public figures who have had their names used commercially without permission. The courts generally distinguish between using a celebrity's photo to advertise a product or service and using the star's photo on a magazine cover to promote the magazine. It is safest to get permission of everyone whose identity is used for commercial purposes.

Broad interpretations of newsworthiness suggest that ethical considerations are important where privacy is a factor. Questions that arise during the "Should-I-or-shouldn't-I?" debate are:

- Where does a person's public life end and private life begin—especially for public officials and public figures? If our elected senator in Washington is an alcoholic who comes drunk to Capitol Hill, should the Washington media report that to the voters back home, or treat it as a personal illness apart from the senator's public life?
- How far back can one go to report truthful information about a person in the news today? If the 37-year-old leader of your community's right to life group had an abortion 20 years ago that few people know about, is that fact newsworthy today?
- Should relatively insignificant infractions or indiscretions by young people be reported, or are young persons entitled to mistakes—and would publishing information adversely affect them? Most state legislatures have dealt with this question and have passed laws dictating which legal proceedings should be closed and which court records sealed. The judge often retains discretion to open a proceeding or record that normally would be closed.

Copyright

Before New York decided in 1903 that a state privacy law was needed to protect a person's name and likeness, Congress had twice revised federal law protecting a person's creative works. To encourage creativity, Congress in 1790 passed a law to punish those who made unauthorized use of those creations.

Every 40 years thereafter, through 1909, the copyright law was revised to take into account changes in technology. A large gap—and many developments in communications—came between 1909 and the next revision in 1976. And already, advances in cable television, video recording, communication satellites and minicomputers have raised questions about portions of the latest law, which took effect in 1978.

Almost any personal creation of a permanent nature can be copyrighted: audio and video recordings, movies, advertisements, photos, TV programs, newspaper stories, term papers—and computer software.

The major communications law case of the U.S. Supreme Court's 1983-84 term was *Sony v. Universal City Studios,* where the Court ruled on the constitutionality of video recording television programs. In a 5 to 4 decision, the Court held that taping off-the-air for noncommercial use in your home does not violate the federal copyright law. The Court reasoned that most people record for the personal convenience of viewing at a later time, and saw this as no violation of fair use copying. The Justices suggested that Congress may want to revise the law, noting that the *Sony* decision pertains to video, not audio, recording. The "time-shifting" justification for video recording hardly applies to taping records off the radio.

Works have copyright protection from the time they are created until 50 years after the author or artist dies. Unauthorized use may be an infringement even if no formal copyright symbol appears on the work and the creation has not been officially reported to the U.S. Copyright Office. This does not mean, however, that information in copyrighted works is off-limits. A news story, for example, is a creation that is protected in its written form. The content of the story, however, cannot be copyrighted.

Can any part of a copyrighted work be copied and used in its original form? Yes, according to the 1976 copyright law's definition of fair use. But the *Sony* case mentioned above shows that this doctrine is not clearly defined. Congress said that four factors determine fair use protection:

(1) *Purpose and character of the use.* Is the material being copied for commercial gain or for educational purposes?

(2) *Nature of the work.* Is the borrowed matter part of a commercial product or from an educational or scholarly creation?

(3) *Portion of the work used.* How much of the original is being reproduced? Using four lines of a six-line poem more likely violates copyright law than printing four lines of a 16-page poem.

(4) *Effect on the market value.* Would your use detract from the copyright holder's ability to profit from the work?

Photocopying by teachers for educational use is a fair use exemption, within limits. A sudden decision to copy a

brief prose or poetry work and distribute it to each student in class would likely pose no legal problem. Reproducing the same copyrighted test to hand out to students each time you teach a class is a probable violation. It is a mistake for teachers or students to assume that anything they copy—be it computer software for use at home or a TV news special for use in class—is OK simply because it is not being resold for profit. *All* fair use factors are to be weighed.

Copyright and privacy laws are ways to balance individual rights and the public's right to know. Journalists and the public do not have absolute rights to speak and print, and individuals do not have absolute protection from scrutiny. Judges and federal and state lawmakers have said that a person may have to sacrifice some personal liberties to provide information that the public needs or wants to know.

Questions

Privacy and Copyright

1. In 1979 a Louis Harris survey found that only 31 percent of those Americans interviewed said that newspapers, magazines and television asked questions that were too personal. But 71 percent said that the names of welfare recipients should not be reported, 51 percent said the names of those under 16 who had committed crimes should not be published, and 78 percent felt that to reveal details about a public official's extramarital affair was an invasion of privacy. How do you account for these different responses?

(The survey also showed that just 21 percent felt it was an invasion of privacy to reprint excerpts from a confidential government report that revealed public officials to be incompetent or dishonest. In specific instances, the public seems to balance potential harm to an individual with potential benefit to society—the same balancing a journalist does when faced with a dilemma that ethics, rather than the law, must resolve.)

2. Under what circumstances is the photographer of your local newspaper free to photograph people without fear of invading their privacy? What limitations exist? Do the same criteria apply to photographers as to reporters?

(Photographers may take newsworthy pictures in public places with little worry about invading a person's privacy. Neither a photographer nor a reporter may trespass without permission on private property, although some leeway is given at the site of a newsworthy event. It is uncertain how much protection photographers would have if, denied access to a newsworthy location, they stood on the public street and used a telephoto lens to shoot through an open window. The question then becomes one of ethics more than law—with the story's newsworthiness playing a part.)

3. ABC-TV dropped its plans to do a docudrama—a dramatized version of reality—based on the life of Elizabeth Taylor. The actress had threatened to sue, charging that such a movie would invade her privacy. Are such movies invasions of privacy?

(We have seen somewhat unflattering movie depictions of Gloria Vanderbilt, friends and relatives of executed killer Gary Gilmore and others. This question has to be answered on a case-by-case basis, since the courts have offered little guidance. Because public figures often seek and profit from anything but the most negative of portrayals, a court in each case may pay less attention to the claims of mental suffering and instead focus on the extent to which the public figure suffers financial loss as a result of the docudrama.

If an actor has made an effort to profit by his or her name, then there is a right of publicity. Actors often fight attempts by others to profit at their expense, and argue that their right of publicity has been violated. However, when the heirs of the late Bela Lugosi tried to stop a movie studio from exploiting Lugosi's Count Dracula character, the court said that Lugosi had not exploited the likeness while he was alive, so he had no exclusive right of publicity.)

4. What are some general guidelines to offer a reporter who is worried about invading someone's privacy?

(The journalist might ask the following: Have I obtained the information legally? Is the material newsworthy—of public interest? Am I sure my information is accurate, timely and appropriate for the story?)

5. What copyright problems are posed by cable TV, satellites and other new technologies?

(As it becomes easier to transmit and receive information, it will be harder to control the flow of that material. Satellites and cables will allow a person to relay material easily and directly. Technology also will make it easier for citizens to monitor one another, share with one another and "borrow" from one another. The extent to which new technology threatens our privacy and makes it easier to "pirate" information might be an appropriate way to close discussion of this chapter. Much will be

speculation, but this can lead to a useful discussion of whether, and how, government should regulate and protect use and creation of new technologies.)

Activities

Privacy and Copyright

1. Students should find current examples of stories in the newspaper and on radio and television that reveal private or personal information about public figures—say, an account of an actor's divorce or of an athlete's arrest for driving while intoxicated. Students can describe or be prepared to discuss with their classmates the use of such content.

(Discussion should highlight how the public would benefit from the released information and how the individual would suffer. Consider whether printing the information is legally dangerous or ethically wrong. Liberal court interpretations of newsworthiness may make the material legally safe but ethically questionable. Students should know the price a news medium pays in loss of prestige and confidence when unethical behavior is identified with a publication or broadcast operation.)

2. Ask students whether the following should be printed in the newspaper. Half the class should pose the questions in terms of the local newspaper and half should ask about printing the information in the student newspaper. Discuss the different responses in class. Students also could role play the situations and assume the positions of parents, students, editors and school administrators.

- The names of two seniors found guilty of stealing typewriters from school late at night.

(If the two are minors, state law may prevent newspapers from publishing the names. Often a local newspaper will voluntarily refrain from publishing names of juveniles. If this is part of the public record, though, the names could be printed.)

- A photograph of two students kissing on the front lawn in front of school.

(This is a public place, and such a photo is not intrusion. It may be part of a local paper's report of spring weather or either paper's story on teenage love. If the photo and caption are tasteful and do not misrepresent what is pictured, they may be OK, even if the two students can be identified.)

3. Prepare copyright guidelines for your school's teachers and students. Write to: Information and Publications, Section LM-455, Copyright Office, Library of Congress, Washington, D.C. 20559 for information that will help you apply the general fair use guidelines to the specific needs of people in your school. The school's librarian, members of the audiovisual department, legal counsel or teachers' organization representatives may have suggestions. Be sure to consider video tapes, audio tapes and computer software.

Worksheet

Directions: Before each of the following, place a "T" if the statement is true and an "F" if it is false. Be prepared to defend your answer.

1. Invasion of privacy involves mental suffering more than financial loss.

2. Only those people who have had their reputations damaged can win invasion of privacy suits.

3. There must be publication before a person can win an invasion of privacy suit against the media.

4. There is no invasion of privacy if what is printed is true.

5. The surest way to lose some of your privacy rights is by being involved in a newsworthy event.

6. If the person inside is newsworthy, a TV reporter may film through the front window of his or her home without permission.

7. A photographer taking pictures inside a store for the owner's newspaper advertisement does not need to get permission to use photos of anyone shopping there.

8. You may copyright and protect as yours a photograph you take or a term paper you write, but you may not copyright an idea you have.

9. The concept of fair use protects a person from charges of copyright violation as long as what is copied costs less than $100.

10. You are not violating copyright law if you videotape a movie on commercial TV, but are in violation if you copy a pay-TV movie on HBO or Showtime.

Answers

1. True. Privacy involves peace of mind, and disturbing that peace does not carry as heavy a burden that one be able to demonstrate financial loss.

2. False. Your reputation—what others think of you—is a factor in libel. How you feel, regardless of what others think, is the important consideration in a privacy suit.

3. False. Intrusion, similar to trespassing, occurs while someone is gathering information. One's privacy can be invaded regardless of what happens to the information later.

4. False. Information that is true, but of such a personal nature as to offend one's normal sensibilities, may be an invasion of privacy.

5. True. Courts have given the media their greatest latitude when reporting something of interest or significance to the public.

6. False. This is the intrusion referred to in #3 above. Without consent, this is an infringement on property the owner can assume is private.

7. False. A person's name or likeness may not be used—or appropriated—for monetary gain without the person's permission.

8. True. Ideas may not be copyrighted, but the specific way you express those ideas—through some permanent form—can be protected.

9. False. There are no such limits set on the monetary value of a copyrighted item. The effect that infringement will have on the monetary value of a work is always to be considered.

10. False. The Supreme Court has said that fair use allows one to tape programs off-the-air for personal use. The Court did not distinguish commercial television from cable's pay channels.

Confidentiality, Contempt and the Courtroom

Journalists argue that they must be allowed to protect the identity of news sources. Without such assurance, most reporters say, sources will not share information that the public should know. And many citizens agree. Two-thirds of those surveyed in a recent Gallup Poll said reporters should be able to preserve the anonymity of news sources.

However, the U.S. Supreme Court has told journalists that they have no more privileges than the rest of the public. This may slow the flow of information, as it did in 1974 when the media were told that their right to talk to prison inmates was no greater than that of the public, and again in 1977 when journalists were denied access to a jail that was off-limits to the public. (See *Houchins v. KQED.*) But such evenhanded treatment aided the press in 1980 when the Court said that because the public has a constitutional right to attend criminal trials, the media share that right. (See *Richmond Newspapers v. Virginia.*)

The Supreme Court applied this philosophy of equal treatment in a ruling on confidential sources in 1972. With a criminal defendant's rights at stake, the government is entitled to every citizen's testimony. (See *Branzburg v. Hayes.*) Journalists are citizens, too, the Court held, and have no absolute constitutional right to refuse to testify. The government even may obtain warrants to search newsroom files for evidence, as police did when they went through the Stanford University newspaper staff's files looking for incriminating pictures of protesting students. (See *Zurcher v. Stanford Daily.*)

The Supreme Court's 1972 *Branzburg* decision, however, implied there is some limited constitutional protection, and lower courts have recognized confidentiality in noncriminal cases involving two parties. State legislatures and Congress also may offer journalists some protection, the Supreme Court said, and in at least 26 states, that help has come through what are called *shield laws.*

Shield laws seldom tell journalists they never have to reveal a confidential source. Instead, such laws are intended to discourage law enforcement agencies or prosecuting attorneys from indiscriminately putting journalists under oath to ask them sweeping questions. Shield laws usually protect confidentiality unless the journalist has specific, essential information about a serious offense and that material cannot be obtained any other way.

The laws are supposed to encourage good reporter-source relations and prevent journalists from becoming investigators for law enforcement, but not let confidentiality obstruct justice. Judges sometimes ignore shield laws, but the mere fact that there is such legislation arguably inhibits the exploitation of journalists and offers assurances to otherwise reluctant news sources.

The media have many freedoms and a good deal of discretion in how they behave and what they print. But in the courtroom, the judge is in control—or is supposed to be. When there is injustice, and a higher court overturns a conviction, it may be the judge who is chastised for failing to protect the defendant's Sixth Amendment rights to a "speedy and public trial"—often interpreted as a "fair" trial.

If a judge tells a reporter to reveal a confidential source, to withhold courtroom information from the public or even to leave the courtroom, the journalist who disobeys faces a contempt of court charge. A reporter who ignores an order not to print the name of a juvenile defendant or a photographer who snaps a picture in the courtroom faces a fine and/or a fixed jail sentence. However, reporters who refuse to reveal the names of news sources when asked may be sent to jail and fined until they comply, or until the judge decides it is an appropriate time for release.

Judges who punish journalists—and the public—by closing courtrooms and jailing reporters may be overreacting as arbiters in the clash between the First and Sixth amendments. Judges are to protect the public's and the defendant's constitutional rights, but doing both is delicate work. And because appellate courts hold judges, not journalists, responsible if a fair trial is denied, the media are restricted more by ethics than by the law in what they report from outside of the courtroom—regardless of its impact on a trial.

A 1950s courtroom scene featuring ambitious local officials, a publicity-conscious judge, and story-hungry journalists led to the murder conviction of Dr. Sam Sheppard that the U.S. Supreme Court overturned. The Court told judges that they must use the legal tools available to ensure a fair trial. (See *Sheppard v. Maxwell.*) Carefully screen prospective jurors, delay or move the trial, sequester the jury, even declare a mistrial, the Court said. And if you must, order participants not to discuss the case

or close the proceeding, the justices added.

In subsequent decisions, the Supreme Court made it clear that judges' orders closing public access to the proceedings should be a last resort, after all other options have failed. The Court in 1979 focused on the Sixth Amendment and said that closing pretrial proceedings would not deny defendants their constitutional rights. (See *Gannett v. DePasquale.*) But the next year, Chief Justice Warren Burger wrote that: "Absent an overriding interest . . . the trial of a criminal case must be open to the public." (See *Richmond Newspapers v. Virginia.*) And in 1984, the Supreme Court affirmed its support for open courtrooms by issuing two decisions that identified the public's First Amendment right to attend pretrial proceedings, including jury selection. (See *Waller v. Georgia* and *Press-Enterprise v. Riverside County Superior Court.*)

Although the public has no absolute right to attend or report on a court proceeding, the *Richmond* ruling eloquently describes how the public benefits from openness in government. The arguments for public scrutiny of the judicial system, and how this protects defendants' rights as well, have been used by journalists arguing for open government elsewhere—with school boards and city councils, administrative agencies and police departments.

One limitation to courtroom coverage has lingered. Many judges remain skeptical of cameras in courtrooms. Concerned with the effect television or still cameras may have on the decorum of the court or on trial participants, judges and the American Bar Association for years have opposed admitting cameras.

When Florida began experimenting with courtroom cameras in 1977, just three other states permitted proceedings to be photographed. Successes in Florida and elsewhere continued. By 1984, cameras were admitted to some courtrooms in 41 states. Access does not extend to federal courts, and laws in different states differ as to which proceedings may be filmed and whether the plaintiff or defendant may object.

Efforts to make camera access easier began after the Supreme Court held in 1981 that it was not unconstitutional to allow cameras in the courtroom. (See *Chandler v. Florida.*) In that case, the Court upheld Florida legislation permitting judges to decide on a case-by-case basis whether cameras in a courtroom would hinder justice. The American Bar Association modified the opposition it had registered, and in 1982 decided that judges should permit broadcasting, recording or photographing except in specific circumstances.

Many constraints on disclosure during the First Amendment (free speech) v. Sixth Amendment (fair trial) clash must be resolved through ethical behavior. One constitutional amendment does not take precedence over the other, and compromise—not confrontation—has been valuable to the press, participants in the courtroom and the public.

One recent example of this occurred when one man accused in the 1983 barroom gang rape in New Bedford, Massachusetts, requested a newspaper interview. Afterwards, he regretted his decision and his attorney asked the judge to prevent publication of the interview, arguing that the story would jeopardize his client's right to a fair trial. After the newspaper was cleared to publish its legally-obtained interview, the editor chose not to do so. As he told his readers, to publish the story would "in effect be a voyeuristic trespass on good journalism. . . . (T)he first public expression of these views and of these accounts more properly belongs in testimony inside a courtroom."

Questions

The Courtroom

1. A reporter for your local newspaper has written a story based on an interview with someone who is selling heroin to high school students. After the story is printed, the reporter is subpoenaed by a grand jury and told to reveal her source. The reporter refuses, saying that she promised the source confidentiality. Debate both sides of this ethical and legal question. How would it likely be resolved if it went to court in your state?

(The ethical debate might involve benefits to future victims if the name is revealed and the drug pusher apprehended, weighed against the credibility of the reporter, who may want to make similar promises of confidentiality to future sources. The legal debate would call for knowledge of your state's shield law—if there is one. According to the U.S. Supreme Court (see the text and *Branzburg v. Hayes* in the Related Court Cases section) journalists must reveal sources to grand juries deliberating in criminal cases. A local editor likely could tell you whether there is a state case or shield law that addresses this circumstance.)

2. The local newspaper (or your school's paper) decides to report the court proceedings of a case involving a former high school custodian and three 15- and 16-year-olds charged with operating a burglary ring.

(A) What will you and will you not be able to report? Why?

(The criminal proceedings, if held in open court, may be reported unless the judge orders otherwise. Identity of the custodian, if not a minor, should be released by authorities and could be reported. State law probably dictates whether the names of the minors may be released. Most likely, the juveniles' names would be withheld—if not by law, then for ethical reasons.)

(B) What advice would you give to the reporter assigned, so the newspaper does not get sued for libel?

(Most court and police records may be "privileged" in your state and protected from charges of defamation, but journalists must be careful not to label anyone a criminal until the person is found guilty. Until then, parties are "accused of" or "charged with" a crime.)

3. John Hinckley was wrestled to the ground and arrested before a national television audience after his assassination attempt on President Ronald Reagan. What is the responsibility of the media in balancing the public's right to be informed of this event and Hinckley's constitutional right to "a speedy and public trial by an impartial jury"?

(Legally, there is nothing to prohibit airing tape of the shooting. Legally, it also is the job of the judge—not the media—to see that Hinckley is afforded his Sixth Amendment rights. Because it harms the public and the media when journalists recklessly report everything they can, the media have become party in many states to voluntary press-bar-bench guidelines.

Ethical instead of legal, the guidelines suggest to law enforcement personnel what information about a crime and criminal should be released to the media prior to the trial. (*E.g.*, name, age, address of the accused; the charge against the accused; the arresting agency; and circumstances surrounding the arrest.) The media, in turn, are told what they should not report before the case goes to trial. (*E.g.*, anything about a confession or a lie detector test; anticipated testimony; speculation about plea bargaining; or statements regarding the character or criminal record of the accused.) The guidelines supposedly offer compromised recognition of First and Sixth Amendment rights.)

4. The courtroom circus called the Sam Sheppard trial is revealed in detail in the film "Free Press v. Fair Trial: The Sheppard Case" (see Resources). Based on the circumstances and outcome of this case, what advice would you give to a judge presiding at a sensational trial such as the one involving the barroom gang rape in New Bedford, the trial of Wayne Williams, accused killer of Atlanta children, or the trial of the murderer of ex-Beatle John Lennon? What could or should be done to assure that the accused in such cases get a fair trial?

(The procedural safeguards the Supreme Court discussed in the Sheppard case deserve review here. Such steps as change of venue (moving the trial), continuance (postponement), voir dire (screening of prospective jurors) and sequestration (secluding the jury) are steps judges take, short of gagging trial participants or barring the media from the trial.)

5. What are the advantages and disadvantages of permitting still cameras and TV cameras in the courtroom? Is the rationale any different when the question concerns cameras in the meeting rooms of the school board? The city council? The state legislature? Congress?

(Discuss advantages in terms of value to the public and the officials themselves—using arguments similar to those supporting an open courtroom. New technologies have produced quiet, unobtrusive cameras much different from those that were judged disruptive to courtroom procedures in the early 1960s.

The disadvantages concern the adverse effect cameras might have on the parties—and performance of their public duties. Neither side has much empirical evidence for support. The result has been continued experimentation, inconsistency among official bodies—with cameras allowed in the U.S. House of Representatives and barred from the U.S. Senate—and emotional argument.)

Activities

The Courtroom

1. Does your state have shield law legislation protecting anonymous sources and journalists who have promised not to reveal a news source?

(A local newspaper editor or reporter should be able to answer this, and get you a copy if there is a law.)

Examine the following:

- If there is no law, why isn't there?

(A local journalist can tell you about media efforts; an area legislator can offer background on activity in the statehouse. Some journalists would prefer to use the First Amendment to argue in court, rather than rely on the phrasing of state lawmakers.)

- If there is a law, what qualifications are tied to it?

(Few states have absolute shield laws; many say that sources must be revealed under certain circumstances—

such as the bearing of this information on a specific crime or the inability to obtain the information any other way; some laws say that even material reporters gather may be subject to scrutiny.)

2. Have students read *All the President's Men* by Carl Bernstein and Bob Woodward, or have them see the movie. Discuss the pros and cons of using a "Deep Throat" informer as an anonymous source and the techniques used in checking other anonymous tips.

(Hindsight makes it easier to justify the use of such an informant. The information obtained led to the punishment of public officials and others guilty of wrongdoing. It is important to note the way these *Washington Post* reporters verified their information—getting two or three independent confirmations before printing something. Journalists know that sources may want to release information for personal and selfish motives while hidden in anonymity.

A danger in encouraging confidential sources surfaced at *The Washington Post* several years after Watergate. Reporter Janet Cooke wrote a captivating story on drug abuse, punctuated by the description of an eight-year-old addict. Her editors did not push her when she said she had to promise anonymity to the boy and his guardians. It was later learned that Cooke had fabricated the youth and the quotes. The credibility of both the *Post,* and of journalists in general, suffered, and the newspaper revised its policy on using confidential sources.)

3. Assess the way a local or regional newspaper or television station covers a trial in your area. Try to follow coverage during the trial, comparing media accounts if possible. In analyzing fairness of the coverage, see if you can anticipate the outcome of the trial before it is announced. Otherwise, assess whether the verdict is predictable from the coverage that preceded it.

Worksheet

Directions: Answer the following questions in the spaces provided.

1. Journalists often have been frustrated when arguing that the First Amendment allows them to protect the confidentiality of their news sources. Why is this "right" sometimes denied to journalists?

2. About half the states offer journalists some protection against efforts to force them to reveal their confidential sources. This protection comes in the form of _____.

3. No one has legal authority to control a reporter's behavior outside of the courtroom.

   A. Is this true?

   B. Explain.

4. Journalists who ignore a judge's order not to print a portion of testimony or not to talk to any of the witnesses face the penalty of a _____ citation.

5. A criminal trial must always be open to the public.

   A. Is this true?

   B. Explain.

6. You would be violating a defendant's constitutional rights if you took a TV camera into the courtroom during the trial.

   A. Is this true?

   B. Explain.

Answers

1. Journalists are told that they have no "rights" that other citizens do not also have. If a journalist has information essential to a defendant's fair trial, the Sixth Amendment rights of that defendant may require information from the journalist or his or her source.

2. Shield laws

3. No. A judge may control the reporter's behavior outside of the courtroom, but only if it can be shown that such behavior would be a clear and immediate threat to the judicial process.

4. Contempt of court

5. No. The Supreme Court has said that criminal trials are to be closed only as a last resort, but judges retain the discretion to close a trial or a portion of it if necessary to ensure the defendant a fair trial.

6. No. States may decide to permit cameras inside their courtrooms. The Supreme Court has ruled that the mere presence of cameras does not violate a defendant's constitutional rights.

Obscenity, Responsibility and Codes of Ethics

During what some people have called a "sexual revolution" and an "era of permissiveness," it seems hard to believe that so much censorship occurs under the guise of "obscenity." Few would advocate an "anything goes" policy—and no court has. But problems arise when people confuse what is illegal with what is irresponsible.

The U.S. Supreme Court has said that the Constitution does not protect obscene material, but because some people do not understand or accept the Court's definition of obscenity, loose interpretations abound and constitutionally protected material has been stopped by those offended.

For many years, the Supreme court struggled with and periodically revised its definition of obscenity. Today's criteria, stated by the Court in *Miller v. California* in 1973, identify a work as obscene if an average person who applies contemporary community standards finds that the work as a whole appeals to prurient interests, lacks serious literary, artistic, political or scientific value and shows or describes in a patently offensive way sexual conduct specifically prohibited by an applicable state law.

Problems in applying the Court's standards have arisen because those offended by tasteless content use only part of the definition to justify suppression. They argue that a work "lacks value" or "violates community standards" or "has offensive sexual content"—and suppress on those grounds alone. To be legally obscene, a work must fit all requirements of the Court's test.

There are exceptions. From its 1968 origins *(Ginsberg v. New York)* through reinforcement in 1982 *(New York v. Ferber),* a double standard of obscenity has applied for adults and minors. The Supreme Court has continued to hold that society benefits and the state fulfills its obligation when it protects the young. Therefore, states may deny minors access to specified material that does not meet the rigid obscenity standards applicable to adults, and may punish those who sexually exploit minors in producing content that is not legally obscene.

Generally, obscenity must be defined in context. Because circumstances are important, generalizations are risky. Thus, neither a nude body nor a four-letter word is always obscene, not even in a student publication. And mere mention of a sexual act or a sexually suggestive situation will not usually meet the Court's definition of "patently offensive."

The media, of course, prefer self-regulation to governmental regulation or nongovernmental pressures. Many newspapers adopt codes of ethics to show the public, as well as their own staff members, that ethical standards are guiding the press in more ways than the law requires. Although it is not illegal for a journalist to accept free baseball tickets, a plane trip to Disney's Epcot Center or bottles of scotch at Christmas, the ethics codes of many papers forbid such behavior. By paying their own way, the media forestall the belief that sources can buy their way into print.

As the number of independent or family-owned newspapers has dwindled and more chain-owned papers have emerged during the past 30 years, some observers have argued that the press has become too powerful. Society cannot afford irresponsible behavior by the shrinking number of newspaper "barons," according to some supporters of a social responsibility philosophy proposed in the late 1940s.

These proponents believe that the freedom to publish carries a corresponding responsibility. Only the most callous would disagree with this, but many print journalists qualify their support. What worries many is the subjective nature of responsibility, and how difficult it is to enforce. Rules may be based on ethical values, but those ethical values cannot be imposed on people. Journalists pose other questions: Who decides what is responsible? And what happens to the irresponsible?

Some efforts to monitor responsible media behavior have had to battle heavy odds. One of the more prominent was the National News Council, created in 1974 to field complaints about media performance, but with power only to issue nonbinding decisions. It suffered from too little visibility and lukewarm media support, however, and disbanded in March of 1984. Some states established news councils for the print and broadcast media; of those, Minnesota's is the only one left.

Such efforts, plus balanced news coverage, a vigorous letters to the editor section, and sensitivity to public tastes and morals may help keep the press free. When the media appear to be serving the public responsibly, the audience

and the government may be more willing to back away and let the marketplace regulate.

Questions

Responsibility and Ethics

1. When emotions run high after a close basketball or football game, a reporter in the locker room hears some honest thoughts expressed in strong language sprinkled with profanity. Where is the line between accurate reporting and poor taste in the use of such quotes? Consider the pros and cons.

(Nothing said will be legally obscene, of course. The question is clearly one of taste. Except for the most visible and colorful of public figures, the grammar and appropriateness of quotes are edited for clarity—and for readers who expect it. Sources usually provide enough quotes to let reporters use quotation marks around the tasteful statements and paraphrase or summarize the off-color remark in an inoffensive way. But reporters who change direct quotes to make everyone sound like an articulate scholar risk losing their readers' confidence.)

2. What are examples of "bad taste" in photos? Why might using such photos—although not illegal—do more harm than good to a newspaper or television station?

(Examples are numerous: a semi-nude or suggestively posed person; a suicide victim; a decapitated body at an accident site; someone making a vulgar gesture. Because most consumers do not expect such content, and because the photo—particularly in the newspaper—makes a stronger impression than the printed word does, pictures that shock or unduly upset readers may prompt a negative response to the newspaper or TV station and distract them from the message.)

3. Is there a censorship board or a set of guidelines for evaluating the acceptability of movies shown in your community? What criteria are used? If there is a board, how does it operate? How are the "PG-13" and "R" rating restrictions enforced in your community? What penalties are there for theater owners who ignore the restrictions?

(Censorships boards to screen motion pictures are constitutional, the U.S. Supreme Court has ruled. But if a movie for adults is being banned on the grounds of obscenity, the board is required to: (a) prove that the content is obscene by Supreme Court standards, (b) make prompt rulings on a movie's fate and (c) provide an appeals process. No state today has a film review board; Maryland was the last, abolishing its board in 1981. But communities may and do have such bodies, sometimes as arms of city councils.)

Activities

Responsibility and Ethics

1. Assess media responsibility as shown through coverage of a current news topic—*e.g.,* an election, the Middle East situation or a local or state government issue. Collect news articles, monitor broadcast coverage, then evaluate the reporting for fairness.

(This can lead to a discussion of the subjectivity of news and audience perceptions. If possible, select a topic that affects students, and something about which they disagree. A controversy surrounding a sports team, the quality of education, drug and alcohol use or morality could be used. The way students reach different conclusions about the same news story should lead to a discussion of problems with legislating morality through obscenity laws and regulations that are interpreted and enforced differently from one community or person to another.)

2. Divide the class into teams and give each a hypothetical legal or ethical problem. Have students discuss the issue from all sides and report to the class on questions raised and possible solutions.

(The bibliography lists several books that raise ethical questions. The *Student Press Law Center Report* also has actual controversies within the high school setting. This exercise should follow #1 above. It is important to discuss alternatives and how to regulate expression without suppressing it. The courts have said that suppession must not come from mere dislike of or distaste for a message. Students should realize that when content is evaluated through subjective interpretations—such as "good taste" and "bad taste"—there is the danger that expression may be stopped merely because it displeases a person with authority.)

Worksheet

Directions: Select and defend your response to each of the situations described.

---

1. In the locker room after the championship game, the team captain and quarterback gets mad at a question asked. He tosses his helmet across the room and shouts, "Hell, we lost because our offense didn't play worth a damn tonight." If you were writing the game coverage story for the local newspaper, what would you do?

A. Use the quotation as it is.
B. Summarize the quotation without the profanity.
C. Change the quotation to read, "Heck, we lost because our offense didn't play well tonight."
D. Cut the quotation and any reference to it.

---

2. Grimley Grayline, president of the local Crusade for a Clean Community, wants the high school theater production of "Cat on a Hot Tin Roof" cancelled. He says that the play is obscene, and cites its theme, profanity by the characters and suggestive costuming that includes Maggie wearing a slip but no dress. How do you respond as the principal of the high school?

A. Tell Grimley that the Tennessee Williams play is considered a classic, and therefore cannot be obscene.
B. Suggest to the director that the play probably is obscene for high school students and should not go on.
C. Try to work out a compromise, altering some language and costumes but allowing the play to go on.

---

3. You are the host of a local radio show and have asked area poet Carson Kitt to read some of his works on the program. When he arrives, you discover that two of the poems he has chosen have graphic four-letter words and sexual references. What do you tell Carson?

A. Nothing, since you know that the words and isolated passages are not obscene by the Supreme Court's definition.
B. Warn listeners beforehand that they should not listen if sexual references offend them.
C. Tell Carson that the words cannot be read on the air, even if they are not obscene.

Answers

1. Most sportswriters would choose "B" or "D" because the language comes from a young person, at a time when he is frustrated. Also, the language would offend many readers. Choice "C" is incorrect; direct quotes should never be altered this way.

2. Because few classics would be ruled obscene today, choice "A" is the closest to being technically correct. Those choosing "B" would correctly argue that a different definition of obscenity applies to young people, although it is unlikely that this play is obscene based on the reasons given. Choice "C" may be the most workable solution in this circumstance, but carries the promise of future censorship efforts by community pressure groups.

3. "C" is the only safe alternative here. Broadcasters are not to air either obscene or "indecent" material, and although the poems may not be obscene in print form, they probably include language that is inappropriate for the airwaves. Warning listeners of the offensive language is insufficient, the FCC and Supreme Court have said.

Broadcast and Advertising Regulation

Congress created two agencies that serve a judicial function and, with federal and state courts, monitor media performance while protecting citizens' rights. Public protection was of secondary concern when the Federal Communications Commission and the Federal Trade Commission were established. The Federal Trade Commission Act of 1914 created the FTC to shield businesses from the unfair competition of false advertising. In 1927, heavy competition for radio frequencies prompted creation of the Federal Radio Commission, which became the FCC through the Communications Act of 1934.

Today, the FCC serves as referee when it is questioned whether a broadcaster's performance is "in the public interest." The FTC protects the public—and advertisers—from false and deceptive advertising. The two agencies resolve controversies with the authority of a federal district court. Although their rulings may be appealed to a federal circuit court, the FCC and FTC have been given broad power to interpret their congressional mandates.

The best definition of "the public interest" broadcasters have today is in the fairness doctrine, a set of FCC guidelines shaped through years of interpretation in various case decisions. Generally, the fairness doctrine obligates radio and television broadcasters to demonstrate:

- Balanced coverage of controversial issues.
- Representation of opposing views in issue or editorial advertising.
- Response time for individuals personally attacked on the air.

Broadcasters have complained for years that such regulation denies them freedom afforded to the print media, and the FCC has proposed abolishing the regulation. The U.S. Supreme Court decided a constitutional challenge to the fairness doctrine in 1969 in *Red Lion Broadcasting Co. v. FCC.* Broadcasters in that case challenged the personal attack rule that required them to give free response time to an author attacked by evangelist Billy James Hargis. But the Supreme Court unanimously upheld the rule and the FCC's duty to protect the public. In the words of Justice White, the doctrine is constitutional,

> *in view of the prevalence of scarcity of broadcast frequencies, the government's role in allocating those frequencies, and the legitimate claims of those unable without governmental assistance to gain access to those frequencies for expression of their views. . . .*

Broadcasters' obligation to report controversy fairly does not give citizens the right to dictate which issues broadcasters must cover, or how to report them. If a local television station devoted a half-hour to the arguments for nuclear armament, that station must demonstrate that it also covered opposition to arms build-up. But a representative of one side has no right to tell a station it must cover this controversy. Nor does the fairness doctrine give persons disagreeing with material a right to reply. The broadcaster, not the public, defines fair and balanced coverage. The Supreme Court upheld this editorial discretion in 1973 when stations were being pressured to accept anti-Vietnam War advertisements because the stations were dealing with this "controversy" in other programming *(CBS v. Democratic National Committee).*

If a station defies the FCC, there are several possible penalties, the most severe of which is license removal. Television stations are licensed for five years, radio stations for seven. At those intervals, management is to provide the FCC with evidence of public-interest programming, although in the 1980s, the FCC dropped specific public-service requirements.

The FCC may impose penalties short of license removal, and any threat of FCC action makes broadcasters cautious. Terms such as "public interest" and "public airwaves" and the FCC's receptiveness to public complaints have undoubtedly given citizens more say in what is broadcast than in what is printed.

Does government regulation serve the public by holding broadcasters accountable, deprive citizens of vigorous reporting by encouraging content that offends no one or inhibit experimentation by rewarding conformity instead of encouraging marketplace competition? These questions have been hotly debated during the 1980s, as the FCC moves to deregulate the broadcast media. (Deregulation is discussed in more detail later in this chapter.)

Advertising was once thought to be of limited value to the public. For its first 24 years, the Federal Trade Commission focused on the impact of unfair advertising on other advertisers. In 1938, Congress added to the FTC's powers the ability to punish advertisers who deceived the

public. Then, grumbling in the late 1970s that the FTC was becoming too assertive, Congress withdrew some of the agency's powers. In 1983, the FTC was told to deal with *deceptive* advertising and to let the marketplace, competitors and the general public police *unfair* advertising.

Competitors, in fact, have been the most frequent petitioners to the FTC. For example, Clorox must now show that it can "do what detergents alone cannot." The FTC is empowered to tell advertisers to stop what they are doing, prove what they are claiming or even run advertising explaining how earlier ads were misleading. And when Profile Bread claimed to have fewer calories than competitors, but in ads did not note that Profile won the per-slice comparison because it was cut thinner, the FTC ordered that 25 percent of Profile's advertising budget for the following year be spent correcting the misleading information.

To keep government off its back, and to reassure the public, the advertising profession established the National Advertising Review Board in 1971. This self-regulatory body sets standards that many advertisers follow. But self-regulation often relies on voluntary compliance, and when such professional groups exert too much pressure, protected liberties may be endangered.

This was the case early in 1983 when the National Association of Broadcasters was forced to dissolve its Radio and Television Codes of Good Practice. The voluntary codes had set standards for such things as amounts of commercial time per hour, advertising for liquor and contraceptives and commercials on children's programs. After the U.S. Department of Justice argued successfully that such standards brought increases in the costs of air time, the codes were dropped.

It is unclear to what extent advertisers are free to express themselves in commercial speech. The print media, especially privately owned newspapers or magazines, have the greatest power and freedom. Publishers generally have the freedom to refuse to accept advertisements without having to explain their reasons for doing so. Often, the publisher and the advertiser share legal responsibility for the content of an ad and any damages that result from printing it. In many situations, advertising contracts release the publisher from liability.

Today, advertising that is not deceptive or misleading is afforded almost the same constitutional protection as political speech. The Court allowed states the right to regulate advertising just as they may regulate other types of expression. But when governmental interests are balanced with the rights of advertisers, the courts continue to rank commercial speech a few steps beneath political expression and allow more restrictions than are permitted for ideas.

In 1981, for example, the U.S. Supreme Court said that San Diego's ban on billboards in the name of aesthetics was unconstitutional—in terms of political or noncommercial messages. In the name of aesthetics, the city could ban commercial billboards that were not on the site of the business, but could not restrict noncommercial billboards.

Freedom for broadcasters and advertisers may expand in the 1980s in light of the federal government's emphasis on deregulation. Leaders of both the FTC and the FCC have spoken publicly of the need to let competitive forces in the marketplace prompt responsible performance.

Removing government regulation of media performance would place the print and broadcast media on more comparable legal footing. Proponents of deregulation argue that contemporary technology has negated one of the primary justifications for regulation. Cable TV, low-power stations, and satellite-to-home transmissions mean that there no longer is a real scarcity of channels. With so many services offered, the FCC is arguing that competition will keep the qulity high.

The rapid growth of cable television suggests an unpredictable future. The FCC, taking a hands-off approach to cable, is encouraging competition that may bring short term benefits to a sought-after public. But the impact of the new technology on news transmission, political decisionmaking, advertising and personal privacy may require supervision. And the public or communicators themselves may turn to the federal government to assure some order, stability and public service in much the same way that radio broadcasters welcomed the Federal Radio Commission some 60 years ago.

Questions

Broadcast and Advertising

1. An out-of-state mail order firm contacts your local newspaper and radio station to place an advertisement. Is either medium legally obligated to accept the ad? Why or why not?

(Neither has to accept the ad. A private newspaper has total editorial discretion and a broadcaster can refuse to accept any product or service ad.)

2. A candidate for mayor approaches an area newspaper

and a television station to place a campaign ad. What legal obligations guide the media in deciding whether to accept the ad?

(There is still much discretion for both media forms, although this is an area to watch. The newspaper, wanting to appear fair, probably would not accept an ad from one candidate without accepting ads from others, but has the legal freedom to decide. Both the newspaper and the station can refuse to accept ads from all candidates—although that may foolishly indicate lack of public service. Newspapers do not legally have to be civic-minded, but the FCC-regulated broadcasters do. Because the mayoral race is not a federal election, the station may choose to accept no campaign ads. But if the station sells ads to one candidate, it must be willing to sell ads to other candidates for the same office. Newspapers have no such restrictions. Note: These differences may be modified soon. The FCC and some members of Congress are urging repeal of both the equal time provision and the fairness doctrine.)

3. The nearby Hash and Hamburger Heaven wants to advertise parttime jobs for "boys between the ages of 16 and 19." A local ordinance prohibits discriminatory advertising on the basis of sex, age or race. Does the local newspaper have the right to run this ad anyway?

(No. Although a private newspaper has considerable freedom, and an advertiser has constitutional free speech protection, the line is drawn when illegal activity, services or products are advertised. The U.S. Supreme Court has said that a city ordinance proscribing discriminatory hiring practices is constitutional, and anyone—including a newspaper publisher—who breaks the law or advertises an illegal activity may be punished. In the case of *Pittsburgh Press v. Pittsburgh Commission on Human Relations* 413 U.S. 376 (1973), the Court ruled against a newspaper that ran "Male Help Wanted" and "Female Help Wanted" sections in its classified advertising.)

Activities

Broadcast and Advertising

1. Invite a local radio or television person to discuss the impact of FCC regulations on local station operations.

(The broadcaster may have opinions on the controversial easing of FCC restrictions during a mood of deregulation. For example, does the guest believe that the public would be served as well if the fairness doctrine were eliminated? And has there been—or will there be—a noticeable decrease in the amount of public affairs programming because the FCC no longer requires it?)

2. Have the class debate the merits of the fairness doctrine or compare the advantages and disadvantages of a doctrine for broadcasters and a similar doctrine for the print media.

(Such discussions probably will note the advantages of socially responsible media, the difficulty in enforcing responsibility and the limited availability of airwaves, making some regulation required.)

3. What does state law say about what can and cannot be advertised?

(Your local media, an area judge or the state attorney general's office should be able to direct you to the law. Some states, for example, prohibit student publications from printing ads for cigarettes or alcoholic beverages. Some states do not allow ads for gambling. Federal and state laws regulate advertising of lotteries or similar games of chance.)

4. Role play the following: A citizens' group has demanded that a local television station stop ignoring the issue of pollution by the community's major manufacturer. The protesting citizens want the station to devote more air time to the controversy, including a debate or public discussion of the controversy. The station management is balking, not because the company is a major community booster and advertiser but because the station believes that only a vocal minority of the community is upset and periodic news stories devote adequate time to the issue. What arguments can both sides make?

(The station would not want to ignore the issue altogether, but has the freedom to determine how it will handle the controversy. By demonstrating receptiveness to community groups on issues like this, the station demonstrates sensitivity to community concerns and broadcasting in the public interest.

The citizens' group, meanwhile, has some leverage by threatening to go to the FCC. The group would have to cite evidence that the station is not serving the public, and the FCC historically has accepted a station's good faith showing that it has covered an issue. The other media likely would report the public protest, and this may persuade the station to acquiesce rather than face bad publicity.)

Worksheet

1. Directions: Match the terms at the top with the most appropriate statement in numbers 1-5 below.

A. Federal Communications Commission
B. Federal Trade Commission
C. National Advertising Review Board
D. Equal Time
E. Fairness Doctrine

1. Advertisers use this group to regulate the advertising industry
2. This governmental body regulates the broadcast media
3. The government's way to see that adverticers do not deceive the public
4. Requires that broadcasters provide balanced coverage of controyersial issues
5. Applies to broadcast advertising of major political candidates for federal office

2. Why would the owner of a radio or television station more likely be sensitive to public criticism of the news than would the owner of a newspaper?

3. If someone on television calls you "a money-hungry parasite who will do anything for a dollar," what right do you have to get the station to allow you to defend yourself on the air?

4. A local television station presents a special on Roscoe Flax, an area resident who heads the national "Military Might Is Right" organization. After the program, six members of a small local group that wants people to withhold taxes for defense spending says the station must be fair by giving them a special program, too. Are they right? Explain.

5. Some elected officials argue that the fairness doctrine and equal time violate the First Amendment because they limit broadcasters' free speech rights beyond the rights of the print media. List the pros and cons of broadcast regulation.

Answers

1. A-2 B-3 C-1 D-5 E-4

2. The broadcasters are licensed by the Federal Communications Commission, and radio or television stations (unlike newspapers) may have to answer to the FCC if too many citizens complain that the stations are not broadcasting content that is in the public interest.

3. The fairness doctrine requires that a station give a person who is personally attacked free air time to respond to that attack.

4. No. The station is obligated to be fair when covering a controversial topic such as this, but it has the editorial discretion to decide how to cover the issue. The station does not have to devote equal time to both groups, but cannot ignore those who oppose military spending.

5. Without the regulation, stations could be more directly responsive to the needs and wishes of their audiences and schedule programming based on ratings and informal feedback rather than on government-mandated rules.

On the negative side, without the regulation, stations would not have to broadcast "public interest" programs and may instead give the public only fluffy programs that get high ratings but do little to inform.

Chapter 10

Student Free Speech Rights and Responsibilities

One of 141 Presidential Scholars scheduled to meet President Ronald Reagan in 1983, Ariela Gross of Princeton, New Jersey, was told that she was a threat to the future of this prestigious program. What the 17-year-old senior—editor of her high school newspaper—was planning to do was present the President with a petition urging him to support a nuclear weapons freeze. "I don't want to be disruptive," she told a reporter. "I only want to express my opinion." Despite the warning from the executive director of the Commission on Presidential Scholars, Gross did present the petition, signed by 14 other Presidential Scholars and close to two-thirds of the 1,067 students at Princeton High School.

Did this expression of personal belief receive prominent media attention because it involved a high school student or because it occurred at a White House awards ceremony? Probably both. It still seems to be "news" when a high school student uses a constitutional right that belongs to all citizens.

How students respond during discussion of the Presidential Scholars incident described may reveal the extent to which they are comfortable with their rights of free expression. In a May 1984 article in *The Progressive*, Nat Hentoff concluded that ignorance of their First Amendment rights among student journalists is "alarmingly widespread." John Bowen, the 1983 Newspaper Fund Journalism Teacher of the Year, concludes from a recent survey on freedom of the student press that many student journalists remain reluctant to exercise their right of free expression.

An appropriate way to get students to understand the First Amendment is to bring it close to them. In the landmark 1969 student rights case, *Tinker v. Des Moines Independent School Dist.*, the U.S. Supreme Court said that neither students nor teachers shed their constitutional right to freedom of speech at the schoolhouse gate. Students and their media—the school newspaper and yearbook—provide a useful context for applying free expression principles. This chapter serves three functions: it reviews each of the free speech/press topics, reveals that freedom of the press has different interpretations and shows students how the First Amendment applies to them as young citizens.

Tinker v. Des Moines is not a student press case, but is a strong statement on the value of free speech in the schools. When the Supreme Court held that students could not be punished for peacefully wearing black armbands to school, the justices were simply applying free speech protections by then widely applied outside of schools.

To review how a free press benefits a free society, examine the student press within the school "society." Both publics are served by a press that is credible through its freedom from censorship and its ability to monitor surroundings. Citizens in both circumstances learn that free speech is a qualified freedom, but they realize this by experiencing it.

The Constitution protects the professional media from government censorship, just as the First Amendment protects the student media from censorship by its "government"—teachers, administrators or school board members.

But this is only in the public school. A private school is like a business or a private newspaper, and just as publishers can hire and fire and set policy for their employees, there is evidence that private school administrators may act in a similarly arbitrary way. Courts have allowed public school officials some discretion, but not the freedom and power of private publishers. There have not yet been any free press cases involving private school publications brought to court.

Judges prefer to let administrators run the schools, and step in only when constitutional rights are blatantly ignored. Because school-age youth lack knowledge and experience, they need adult guidance, courts have ruled. Students and their media are thus more easily suppressed than the professional press. The student media's self-proclaimed role—be it a record of school activities, a forum for student ideas or a journalism writing laboratory—may affect its freedom. As we will see, the paper that is a student forum is harder to regulate legally than a laboratory newspaper.

Prior Restraint

Restriction of the student press is permissible, as is restraint of the professional media. But the power is limited, and censors in both circumstances must provide due process and show legal justification for the restraint. A public high school can establish reasonable rules concerning the time, place and manner of distribution of publications on school grounds, but cannot control distribution off-campus. This is true for either official or "underground" student publications.

To refuse distribution of a student medium, at least one

of the following three questions must be answered affirmatively:

- Is it obscene? Although obscenity is defined more rigidly for minors than for adults, there is a distinction in terms of sexual depictions. Most censorship of offensive language as "obscene" is based on distaste for a word or phrase. Legally, this is not grounds for censorship. No single word or phrase has been found by a court to be legally obscene. The context of the word or phrase has always been considered.
- Is it libelous? Unlike professionals, student journalists may have libelous copy censored. As the following libel section reveals, student media must use the same defenses available to professionals. Few students have lost libel suits, but one New York district court in 1979 held that a principal appropriately halted distribution of a newspaper that contained an item potentially libeling a student government officer. In *Frasca v. Andrews,* a federal judge for the first time upheld distribution restraint on these grounds.
- Might it disrupt the educational process? The judge in *Frasca v. Andrews* also said that a letter in which the lacrosse team threatened to harm physically the student sports editor justified restraint on the grounds of substantial disruption.

Courts will look closely at such attempts to censor and school officials must demonstrate an immediate and real threat to the educational process. The Second Circuit Court of Appeals told a Granville, New York, school official that students could not be suspended for publishing and distributing off-campus a newspaper that in no way interfered with school operations. (See *Thomas v. Granville School Dist.*)

Any prior review process must clearly and precisely: (1) identify material that may constitutionally be prohibited, (2) identify to whom material must be submitted, (3) indicate a reasonable time within which a decision will be made and (4) provide an appeals process. (See *Nitzberg v. Parks.*) Such due process safeguards parallel the constitutional protection given all citizens. But writing prior review guidelines has not been a simple task for school administrators. In every related school case to date, judges have ruled the prior review guidelines too vague or overbroad to be constitutional.

Regulation of student publications must not be based on mere dissatisfaction with content. A Mississippi principal recently had his picture cut from 600 printed high school yearbooks because his upper dentures were slipping and he thought the photo was "inappropriate for an annual." An Illinois student newspaper was censored because the administration felt the newspaper failed to "promote the school image." Neither of these rationales would hold up in court. Neither is based on the justifications for censorship. Obscenity, libel, disruption in the school, advertisements for illegal products or services, threats to national security—these are unprotected areas of free expression. Personal discomfort and embarrassment are not.

Student behavior may be regulated, of course, and punished when rules are broken that do not relate to protected speech. Just as a city may require all groups to get parade permits before marching through the streets and may prohibit newspapers from placing coin-operated sales boxes on the medians of busy roads, so may the school regulate where, when and how student publications are distributed. And those who defy such rules that apply to everyone may be stopped and punished.

The student press faces two other forms of censorship the professional press does not. Courts have told school officials that they may not withdraw funding for student media because they are dissatisfied with the content. But some student voices have been stopped by moving the faculty adviser to a new assignment at a different school or closing the student publication at the end of the school year. Although both actions have been successfully fought, tight public school budgets have given administrators more leeway with changes attributed to "financial exigencies." The result is the same: student voices may be silenced.

Libel, privacy, copyright, confidentiality, obscenity and advertising regulation concern student media as well as the professional press.

Libel

Although libel cases involving student publications are rare, a desire to protect student and faculty reputations has led to administrative censorship and staff self-censorship. Unlike the professional press, student media are subject to censorship of libelous copy, presumably because of the relative immaturity of student journalists and the impressionable nature of young student readers.

Because libelous copy may be restrained, material that is not defamatory but is embarrassing sometimes is censored in the name of libel. In court, however, libel is measured by the same standards that apply to a daily paper. What is censored in the scholastic press as libelous often does not meet the necessary standards.

As Chapter Five shows, it is easier to libel private persons than public officials or public figures. Students usually will be considered "private," administrators "public," and teachers may be either, depending on what is

discussed. Coaches, for example, have had to show that the student media acted with actual malice, and fair comment on their coaching ability has been allowed.

Occasionally, a student may be a public figure. A Michigan student who was president of the high school's student senate, an announced candidate for the school board and a counselor at a local drug center, and who publicly commented on a local drug center controversy, lost a case in which he charged school officials had libeled him. As a public figure, he had to show the newspaper was reckless, the Sixth Circuit Court of Appeals held. (See *Henderson v. Kaulitz.*)

Student journalists are safest if they rely on common sense and the basic libel defenses—truth, fair comment and qualified privilege. If students can prove that what they say is true, offer supported opinion about the performance of a public official or public figure and report accurately from public records or public meetings, there should be no danger of a libel suit.

Privacy and copyright

"Newsworthiness" may be defined differently in the high school and professional press, but otherwise privacy and copyright laws apply equally in the two settings. The Privacy Act of 1974 and the Buckley Amendment that gave parents more control of their children's school records have put some information off-limits to the student press. Restrictions on what may be released, and under what circumstances, are similar to restraints facing professional journalists denied access to closed court records.

Student journalists should avoid trespassing or violating a person's property rights to get a story and must have written permission to use a person's name, photo or likeness in an advertisement—just as professionals must. The daily press may easily justify as "newsworthy" a story about the obnoxious behavior of a movie star at a private party. A high school journalist would have a harder time defending a report that the high school drama coach created a disturbance at a party in his home.

One federal appellate court has allowed school officials to restrict a student newspaper's sex questionnaire because experts testified the survey used could cause psychological harm to high school students. (See *Trachtman v. Anker.*) The Second Circuit Court of Appeals suggested that the emotional anguish central to one's privacy rights may be interpreted differently for high school students.

Student journalists have successfully fought attempts to keep from them public information that was available to professional journalists. When the police in one midwestern community refused to let student journalists see the report of a traffic accident near the school involving students, the high school journalists objected. The police changed their policy when the students pointed out that state and federal freedom of information laws gave all citizens legal access to such official records.

Confidentiality

Student journalists may have less protection than professionals in terms of refusing to identify confidential sources. The Constitution offers little guidance, the Supreme Court has held, and many journalists turn to shield laws for help. State law may define "journalist" in a way that excludes students, however.

New Jersey has a broad shield law that the state supreme court said offers journalists almost an absolute right to keep sources confidential. But when a high school adviser there refused to tell a judge the name of a student reporter who had interviewed a local drug dealer, the adviser was cited with contempt of court and threatened with a jail sentence.

The judge said student newspapers were not protected by the shield law, which applies only to newspapers circulated at least weekly, with a paid circulation, and registered for a second-class mailing permit. A grand jury spared the adviser time in jail when it dropped its demands, but no constitutional or shield law for the student press was acknowledged.

Grand juries will not issue subpoenas every time a confidential source is used in a high school paper. Students should follow the professionals' lead and save the promise of confidentiality for the story that requires it, and the needed source who would not otherwise talk.

Obscenity

Supreme Court distinctions between adults and children have made it easier to stifle student expression labeled obscene. Obscenity has no constitutional protection, and since the Court ruled that minors may be shielded from content that is milder than the "hard core" defined for adults, "obscene" copy has frequently been censored from student publications.

Obscenity and profanity are different, however. Many courts have ruled in school cases that a vulgar word is not by itself obscene. Even with a different obscenity definition for youth, unless use of profanity can be shown likely to disrupt the school, there is no legal justification for censorship. A New York judge ruled recently that the words "ass" and "pissed off" were not obscene and did not justify censorship. (See *Frasca v. Andrews.*)

Effective student journalists, of course, do not

gratuitiously use profanity any more than professionals do, for the same reason: it distracts the audience.

Advertising regulation

It may be safer here to compare high school publications with radio and television stations than with professional newspapers. The hitch comes because a daily newspaper is private but a public school's student paper, like a broadcaster, has an element of government involvement. Editorial discretion permits editors to refuse commercial advertising, although some states prohibit advertising for cigarettes or alcohol in student publications.

High school editors lose some freedom when editorial or issue advertising is involved. A student newspaper that encourages discussing many topics and exchanging student ideas is harder to censor legally. In a court test involving student publications, it was found to be unconstitutional for a state school to establish a means for such an exchange of ideas and then deny someone the right to use it.

The judge in *Zucker v. Panitz* said that if a public school's newspaper deals with a variety of issues and accepts advertising, it may not refuse to sell space to someone wanting to express an opinion on an issue. In this case, the principal was told he could not stop the student newspaper from running an anti-Vietnam War ad, since the paper had served as a forum for student ideas on a variety of topics. A professional newspaper may reject any ad for an issue or a product. A broadcaster, bound by the fairness doctrine, may decide not to accept advertisements on a particular issue, but once a decision is made to sell ads there is an obligation to be fair.

Any medium—professional or student—that advertises illegal activities or services, however, may be punished. In a 1980 high school case, the Fourth Circuit Court of Appeals (Maryland, Virginia, West Virginia, North and South Carolina) went a step further. The court upheld a school policy that permitted censoring a student newspaper that carried an ad for drug paraphernalia. The court said that school officials were justified because the product advertised endangered the students' safety. (See *Williams v. Spencer.*)

A responsible student press establishes its own credibility, fosters a respectful audience and may even promote its own financial stability. We have seen that few laws and fewer judges make our constitutional freedoms contingent upon responsible behavior. We also know that it is far cheaper, less time-consuming and more useful to resolve differences outside the courtroom.

To balance the school or government officials' power and position, citizens have laws, the Constitution and judges. But because most free speech controversies never go to court—and officials know this—compromise, negotiation and efforts to gain respect and trust may be more practical options.

One advocate student journalists have when negotiating for their press rights is the Student Press Law Center. In addition to publishing reports on court cases and legal and ethical issues involving the student press, the director is an attorney who can offer guidance to scholastic journalists. (See the Resources section for the SPLC's address and phone number.)

Judges have given school officials broad discretion as custodians of America's youth. This includes power to stop threats to the educational process, punish insubordination, decide where and when and how free speech is exercised in school, eliminate costly student publications and transfer teachers to meet school needs.

A student newspaper staff should have guidelines and codes of ethics, the same as professionals. Guidelines can describe responsible behavior for reporters, editors and photographers. A separate document should clarify student rights, their limitations and due process.

Questions

Student Rights and Responsibilities

1. After reviewing the advantages and disadvantages of an adversary relationship between the news media and government, apply the analogy to the high school "society." Are there pros and cons to a similar relationship between the student media and the school administration?

(The watchdog function can be useful in both contexts, encouraging officials to remain responsive to citizens' needs. Occasionally, too much antagonism prods government to exert its power and stifle expression . . . with public approval. After student Charles Reineke won his court case in 1980 against a school administration that had censored the issue-oriented newspaper, the student body president and 50 other students burned copies of the paper in front of the high school to show support for the administration.)

2. The *Tinker v. Des Moines* case should be discussed and perhaps role played (see Activities section). Would the case have been resolved any differently if it had been a teacher who wore the armband and was told not to? What if students were wearing "White Power" buttons to school during tense days of white/black hostility and fighting?

(Unless a signed teacher contract forbade wearing armbands—an unlikely occurrence—the ruling would have been no different. Teachers and students both have constitutional rights in the school. The "White Power" buttons present a different concern. When a Cleveland school faced a similar situation with armbands, a court upheld the school's right to prohibit the symbols because of the strong likelihood that wearing them would result in substantial school disruption.)

3. What special circumstances suggest that a drama critic or sports columnist writing about high school performances for the student newspaper must take care to avoid a libel suit?

(Fair comment and criticism protects the journalist who reviews performances of public figures. Student actors and athletes are not professionals, however, and criticism of their work must be tempered. They may more often be considered private persons than public figures.)

4. The student newspaper editor wants to encourage a more open exchange of ideas among readers, but to avoid legal problems plans to print a statement on the editorial page that says: "The opinions expressed in the letters to the editor are those of the writer and not the staff of this newspaper." The editor reasons that such a disclaimer makes the writer, not the newspaper, responsible for any libelous statement printed. Is this correct? Why or why not?

(The editor is wrong. Editorial discretion that lets an editor select, reject and edit all copy carries with it the responsibility for those decisions. The disclaimer is worthless.)

5. Your school yearbook staff wants to include characters from the "Peanuts" comic strip in its upcoming annual. Would it be an infringement of copyright law for the students to use blow-ups of the characters without getting permission? Why?

(Yes, it would be copyright violation. It is not "fair use" to reproduce Charles Schulz's creations, make them part of a product that is sold and fail to compensate the creator.)

6. An overnight break-in at the high school has left $500 worth of damage to the administration's offices. The principal says that she does not think this should be reported in the school newspaper. If you agree, why? If you disagree, how would you convince the principal?

(If the newspaper is primarily a public relations tool for the school, the negative publicity would be of concern. The break-in probably would be reported in the local media, however, and students certainly would know of it. You might convince the principal that a clear and complete report of the incident in the student newspaper would dispel rumors and may lead to apprehension of the vandals. This approach should be more effective than a confrontation and argument that censorship is not legally justified—although that is true.)

7. In a spring issue, the student newspaper runs a photo of a nude sunbather lying face down on a local beach. The editor and adviser are told that all copy and photos for future issues must be brought to the assistant principal, who will eliminate such "obscene" material before publication.

(A) As editor, evaluate arguments on the use of such a picture.

(Is it related to a news story or is it merely sensational? Considering the uproar that could have been predicted, there should be a pretty good reason to take the risk and use the photo.)

(B) Would such a photo be considered obscene if it appeared in a high school newspaper? Why or why not?

(Unless the photo was suggestive and appealed to prurient interest in sex, it probably would not be obscene, even in a student newspaper. Obscenity is more loosely defined for minors, however, so there is a risk in running it.)

(C) Is prior review by the assistant principal legally permissible in this instance? Why or why not?

(In the Seventh Circuit—Wisconsin, Illinois and Indiana—prior restraint in the high school is not permitted. Prior review is allowed elsewhere. But there must be procedural safeguards that clearly spell out the process, and the assistant principal must show legal justification for cutting any copy.)

8. Does state law prohibit any type of advertising in your student paper?

(You will have to check state law here. Call your school's legal counsel or the local newspaper for assistance. There may be prohibitions against advertising alcohol and tobacco products and religious issues or services. Some states also regulate political ads and endorsements in student newspapers.)

Activities

Student Rights and Responsibilities

1. Role play the U.S. Supreme Court case of *Tinker v. Des Moines,* having students present the arguments of the

justices who wrote opinions.

(This can precede a class discussion of the case's significance. As a review of how the judicial process works, consider the vague wording in parts of the majority opinion and problems for those who must interpret and apply the ruling. Note that students have more successfully applied the holding in this case in later high school press controversies than in subsequent cases involving dress codes and long hair. This is because the former cases deal with ideas and the latter concern conduct.)

2. Draw up a bill of rights for students, covering freedom of speech, freedom of assembly, freedom of the press and right of petition. The document should closely parallel the liberties guaranteed all citizens under the U.S. Constitution. Survey students, faculty members, administrators, school board members and parents to assess support for these rights and discuss any objections raised.

3. Role play a school board hearing that concerns a newspaper story on the sale of term papers. Board members and school officials want a newspaper reporter, editor and adviser to reveal the name of the person who gave details of a "ring of students" that buys or produces, and then sells, term papers. The reporter promised the source confidentiality, but now is threatened with suspension for being a party to the "illegal and unethical" activity.

(This should get students to check the state's shield law to see if scholastic journalists are protected. In this case, it is unlikely that anyone could be suspended for failing to reveal a source, but the ethical pros and cons of confidentiality could be raised.

On the staff's side: the information is valuable to teachers and may not be obtainable any other way; revealing the source may keep others from speaking to reporters; other ways of getting these names should be available; no law requires that sources be revealed to school personnel. School officials have few legal tools with which to coerce the staff, but might argue that the availability of such term papers hurts everyone—those who buy instead of write them and those whose work is compared to these papers.)

4. Find old copies of yearbooks—those with captions of "clever" sayings beneath the individual pictures. Discuss which sayings border on the libelous.

5. The high school principal says that starting next year, he will want to see all newspaper copy before it goes to the printer. You suggest, as an alternative, that the staff write statements of rights and responsibilities that the school board would be asked to endorse and the newspaper staff asked to follow. The principal agrees. See samples from area schools, the Student Press Law Center and possibly your state's Department of Education before you prepare this document. Bring it to the board for action or reaction.

Worksheet

Directions: Assume that The Silent Majority consists of 28 students who favor a moment of silence at the beginning of each school day. The group, which meets weekly at the home of senior Mary Lou Fenwick, is still trying to convince public school officials in your community to let them distribute brochures and conduct a rally on the football field to gain public support. For each of the following situations, indicate whether you believe the action described is (A) constitutional, (B) constitutional but unethical or (C) unconstitutional. Then briefly defend your answer.

1. The principal says that the brochures may not be distributed on school grounds because they were not produced in school by an official organization.

The principal's action is

Your reasoning:

2. Students are told that they may distribute the brochures at the school's main entrance only before classes begin and at the end of the school day. Five students say that they have a right to hand out the brochures any time they want to, and do so between classes. The students are suspended from school.

The suspensions are

Your reasoning:

3. A reporter conducts an interview with one of the students, who is quoted—anonymously—as saying: "Our principal can really make students' lives difficult. He's a first-class ass." The newspaper adviser tells the editor not to print the quotation. The editor does anyway.

The editor's action is

Your reasoning:

4. Students in a social studies class want to survey other students about their feelings on this question. They prepare a questionnaire, but when they approach the principal for permission to distribute it in homerooms, they are told that school policy prohibits the distribution of any surveys or questionnaires in school classrooms.

The principal's action is

Your reasoning:

5. The editor writes an editorial urging students to show their support for a moment of silence by remaining quietly in their seats for 5 minutes after the homeroom period has ended next Monday. The principal says that this portion of the editorial must be removed before the editorial may be published.

The principal's action is

Your reasoning:

Answers

1. (C) Unconstitutional. Off-campus publications have as much constitutional protection as school-produced publications. There may be other valid reasons to stop distribution, but this is not one.

2. (A) Constitutional. Time, place and manner of distribution may be justifiably regulated. Those who violate such regulation may have their actions punished.

3. (B) Constitutional but unethical. The content is not legally obscene, so there is no legal justification to suppress it. That the editor ignored the adviser and may offend some readers makes this an ethical question.

4. (A) Constitutional. This is another of the permissible time-place-manner regulations that justifiably prevent disruption of the school day and is evenhanded.

5. (A) Constitutional . . . if there is reason to believe that students would do as they were told. That would disrupt the educational process; such disruption is justification for stopping circulation of the material.

Chapter 11

Final Impressions

This brings the discussion back where it began—focusing on students as valuable contributors and participants in a free society. If young people are to embrace the precepts of democracy and its constitutional foundation, it will not be because adults have told them to but because experience has shown them the fruits of freedom and the frustration, the suffering of suppression.

Unit guests

Visitors to the classroom could contribute in a variety of ways to discussions during this unit. As with any guest you invite to school, take care to determine the guest's knowledge of the First Amendment and related issues, and the guest's ability to relate these to high school students. For example, many knowledgeable attorneys have little or no experience with First Amendment cases. And some authorities, including publishers, editors and station managers, look upon students and student journalists as less than the citizens they are. However, this should not discourage you from inviting to school those you think can help bring First Amendment issues closer to your students.

1. A local attorney, the school's legal counsel or a judge could discuss:
   - The rights and obligations of the media in courtroom coverage.
   - Ethical and unethical behavior by the media, judges and attorneys in reporting legal proceedings.
   - Student journalists' rights and limits to those freedoms.
   - Advantages and disadvantages of cameras in the courtroom.
   - Interpretation of the state's laws on open meetings, open records, confidential sources, libel or privacy.

2. A newspaper editor and a radio or television news director could review:
   - Libel—their major fears, those parts of their work that most likely could lead to libel and safeguards they have.
   - Policies on accepting gifts or free tickets, reporters' political activities, choosing letters to the editor.
   - Coverage of crime and the courts to protect defendants' rights and minimize threat of libel or invasion of privacy.
   - How the media deal with attempts to deny journalists access to public meetings and public records.
   - Community or advertiser pressures that may influence or restrict the flow of information—and how the media resist those forces.
   - Ethical policies/codes that are followed, specifically regarding use of offensive language or content.

3. A newspaper or broadcast news reporter could appropriately discuss:
   - Many of the above questions from a different perspective.
   - Newspaper or station policies that place burdens on the reporter.
   - Policies or ethical practices that more newspapers and stations should adopt.
   - The value of the First Amendment.
   - Whether the reporter should ever reveal a source or promise confidentiality in the first place.

4. A journalism law professor from an area college could discuss legal topics related to professional or student media.

Concluding Activities

The preceding questions and activities should help evaluate student awareness and understanding of unit content. Several additional activities could help assess students' ability to apply the principles discussed.

1. Use free speech conflicts reported in the media or recreate situations described in the Student Press Law Center Report and role play as participants in legal controversies. Students can develop arguments on all sides and serve as jurors, judge and attorneys.

2. Stress the need for compromise and conflict resolution while role playing ethical dilemmas with students as journalists and government officials, reporters and editors, school advisers and administrators, judges and journalists.

3. Survey the public regarding its perceptions of the Bill of Rights. Determine public attitudes in general to constitutional rights and public response to specific hypothetical situations. Compare results of public or student attitudes regarding the Bill of Rights in general and views on specific applications of those rights.

Related Court Cases

These cases correspond to topics in the preceding unit. Summaries of most of the cases are available from the following sources: The Student Press Law Center (for student press-related cases); *Mass Media Law,* 3d ed., by Pember; *The Idea of Liberty: First Amendment Freedoms,* by Starr; and *Mass Communications Law in a Nutshell,* 2d ed., by Zuckman and Gaynes. See the Resources section for complete entries.

1. Historical and theoretical introduction

Abrams v. United States, 250 U.S. 616 (1919): This early case involving the federal espionage act includes a stirring commentary by Justice Oliver Wendell Holmes on the value of dissent and the "marketplace of ideas" philosophy.

Houchins v. KQED, 438 U.S. 1 (1978): Broadcasters who were seeking special access to jails were rebuffed in this case, which typifies the U.S. Supreme Court's decisions saying that the media do not have any special rights not given to the public.

Tinker v. Des Moines Independent School Dist., 393 U.S. 503 (1969): This landmark case affirms that school officials must acknowledge the constitutional rights of students. When the school hurriedly established a rule against wearing armbands in school, and then suspended three students who peaceably wore them the next day, the Supreme Court said that such symbolic expression was protected and could be halted only if officials are able to show that the expression would disrupt the educational process.

NAACP v. Claiborne Hardware Co., 458 U.S. 886 (1982): This case reinforces the right to boycott as a means of expression. Merchants asked the Court to hold the NAACP liable for damages suffered during a boycott called by the organization. The Supreme Court unanimously upheld the NAACP's right to call for a boycott, adding that the NAACP was not to be held responsible for the illegal activity of any individual during the boycott.

2. Government authority and prior restraint/censorship

Near v. Minnesota, 282 U.S. 691 (1931): Prohibits prior restraint unless the censor can show that the content is obscene, a threat to national security or likely to incite violence. Even when attacks on government come from a bigoted, racist editor, publication should be permitted unless authorities can demonstrate one of the above three exceptions exists, the Court said.

New York Times v. United States, 403 U.S. 713 (1971): Printing the Pentagon Papers could not be halted because the government failed to show that publication of the papers, with historical matter on how the United States became involved in the Vietnam War, was a threat to national security.

Nebraska Press Assn. v. Stuart, 427 U.S. 539 (1976): Before barring the press from reporting on a sensational murder trial, a judge must use every other available means of ensuring a fair trial and must show that a "gag" on publishing courtroom activity would be the key to the defendant's getting a fair trial.

Smith v. Daily Mail Publishing Co., 443 U.S. 97 (1979): The media may not be prevented from or punished for printing truthful information legally obtained, unless there is an overriding state interest. (See *Near v. Minnesota.*) A West Virginia statute was found unconstitutional because it permitted punishing a newspaper that lawfully learned, and then printed, the name of a juvenile offender.

Miami Herald Publishing Co. v. Tornillo, 418 U.S. 241 (1974): A state law that forces a privately owned newspaper to print the response of a political candidate criticized by the newspaper is unconstitutional. A candidate for the state legislature used a state right-of-reply statute to demand space for a response to a scathing editorial in *The Miami Herald.* The Court unanimously said that government should not have such editorial control.

Island Trees School Dist. v. Pico, 457 U.S. 853 (1983): A school may not deny students access to certain library books simply because school officials do not like the ideas in those books. Officials have authority to remove books from the curriculum, but in ignoring recommendations of a Book Review Committee, school board members were unconstitutionally denying access to protected expression, the Court said.

3. Libel

New York Times v. Sullivan, 376 U.S. 254 (1964): The Constitution protects new papers that have defamed public officials from libel suits, where the defamation occurred without recklessness or knowledge that the information is false. A *Times* ad, paid for by civil rights leaders protesting actions by officials in Birmingham, Alabama, included inaccurate information. But because the *Times* had not acted recklessly, and commentary on the performance of public officials should be encouraged, the Court said,

these false, defamatory statements were constitutionally protected.

Gertz v. Robert Welch, Inc., 418 U.S. 328 (1974): A private person need not show that libel was a result of recklessness, but must show that the publication was at fault and that the libelous statement injured the person. When a magazine carried false charges that prominent attorney Elmer Gertz—defending a youth shot by a policeman—was a Leninist with a criminal record, the Court said that Gertz was not a public official or public figure and so did not have to show recklessness to win a libel suit.

Hutchinson v. Proxmire, 443 U.S. 1111 (1979): To be considered a public figure—and thus required to show that publication was reckless—a person must thrust himself or herself into the public light or have a position of public influence. A university researcher won his suit against Senator William Proxmire, who had awarded the researcher a "Golden Fleece Award" to symbolize waste of taxpayers' money. Although he received government money, Hutchinson was not a public figure or public official.

4. Invasion of privacy and copyright

Time v. Hill, 385 U.S. 374 (1967): A false, but nondefamatory, statement is not an invasion of privacy unless the publisher acts with recklessness or knowledge that the material is false. The Hill family accused *Life* magazine of falsely reporting that a play depicted a hostage situation the family had experienced. The Court said that to win such "false light" invasion of privacy suits, there must be evidence of reckless publication.

Cantrell v. Forest City Publishing Co., 419 U.S. 245 (1974): A reporter who gave the false impression that he had talked to a source invaded her privacy through his reckless behavior. A reporter writing a story on the impact of a bridge collapse made up quotes and physical descriptions of a widow who was not home when the reporter was gathering information. The false representation here was deliberate and reckless, according to the Court.

Sony Corp. v. Universal City Studios, 104 S.Ct. 774 (1984): It is not a copyright violation to video record from a television for nonprofit use in one's home. The Court overturned a circuit court to rule that the Copyright Act of 1976 did not prohibit fair use recording off the air. The Court concluded that most home viewers taped programs mainly to watch them at a more convenient time.

5. Confidentiality of sources

Branzburg v. Hayes, 408 U.S. 665 (1972): A reporter has no constitutional right to refuse to reveal sources to a grand jury in a criminal case, and—as is true for any citizen—is expected to testify. A grand jury is entitled to everyone's evidence when trying to determine whether a crime was committed or whether a person should be brought to trial.

Zurcher v. Stanford Daily, 436 U.S. 547 (1978): Journalists have no special status protecting them from search warrants that allow police access to the newsroom and journalists' files. Student journalists at Stanford University were thought to have file photos showing protestors who might have committed crimes during a campus demonstration. Journalists argued that a subpoena —asking them to bring the requested material to court— should have been used, but the Court said that if a judge felt a search warrant was justified, such action was constitutional.

Bridges v. California, 314 U.S. 252 (1941): To find a journalist guilty of contempt of court for printing something, the out-of-court behavior must be a clear threat to the administration of justice. The *Los Angeles Times* printed editorials critical of a judge and his courtroom while the case was being heard. The Court said that punishment was wrong here unless it was shown that publication had threatened the judicial proceedings.

6. Free press vs. fair trial

Sheppard v. Maxwell, 384 U.S. 333 (1966): The judge must take necessary precautions to see that a sensational and irresponsible press does not prevent a defendant from getting a fair trial. Dr. Sam Sheppard, on trial for the murder of his wife, was subjected to intense pretrial publicity and courtroom tactics by a judge and prosecutor running for election. The resulting atmosphere strongly suggested that Sheppard did not get a fair trial, the Court said.

Gannett v. DePasquale, 443 U.S. 368 (1979): The Sixth Amendment right to a speedy and public trial does not require that the media be able to attend pretrial proceedings. In the First Amendment v. Sixth Amendment balancing act, the Court accented the latter when it said a judge could close to the press and public a pretrial hearing on the admissibility of evidence in a murder case. (See also *Waller* and *Press-Enterprise* cases.)

Richmond Newspapers v. Virginia, 448 U.S. 555 (1980): One year after *Gannett,* the Court distinguished pretrial from trial proceedings. Ruling on First Amendment grounds, the Court said the public—and the press—have a constitutional right to attend criminal trials. A trial judge had improperly denied two reporters access to a murder trial, as no evidence of a threat to the administration of justice was presented.

Estes v. Texas, 381 U.S. 532 (1965): The media do not have a First Amendment right to bring cameras into the courtroom. Cameras had been allowed in Texas courtrooms, but the bright lights, bulky cameras and numerous cables and cords were thought to have an adverse influence during the trial. During the publicized embezzlement trial of financier Billie Sol Estes, the judge, jury, witnesses, lawyers and defendant could be affected, the Court said.

Chandler v. Florida, 449 U.S. 560 (1981): It is not unconstitutional, nor does it deprive defendants of their

constitutional right to a fair trial, if a state permits cameras in its courtrooms. This ruling did not acknowledge a constitutional right of access for cameras in the courtroom, but the Court held that the Florida law permitting cameras in courtrooms on an experimental basis did not deprive two police officers of their constitutional rights. According to the Court, the officers on trial had to demonstrate that the presence of cameras would deprive them of a fair trial.

Globe Newspapers v. Superior Ct. of Norfolk County, 457 U.S. 596 (1982): A state may not automatically close any part of a criminal trial, but must justify closure on a case-by-case basis. Massachusetts law closed all trials involving sexual offenses and victims under the age of 18. The Court overruled a judge who excluded the press and public from testimony during a rape trial, holding that criminal trials should be presumed to be open and a law that closes criminal trials is unconstitutional.

Press-Enterprise v. Riverside County Superior Court, 104 S.Ct. 819 (1984): The Court unanimously ruled that the presumption of openness in criminal trials extends to the voir dire process. A judge should not, without cause, close to the public or media the proceeding during which prospective jurors are questioned before being chosen or rejected.

Waller v. Georgia, 104 S.Ct. 2210 (1984): In another unanimous decision, the Supreme Court held that a judge should not close a pretrial hearing if the defendant wants the hearing open. When the judge closed the hearing at the request of the prosecution, the court held the defendant was denied his Sixth Amendment right to a "speedy and public trial," even though this was a pretrial proceeding.

7. Obscenity

Ginsberg v. New York, 390 U.S. 629 (1968): When minors are involved, obscenity is less rigidly defined and states have more flexibility in enforcement. Luncheonette owners violated a state law when they sold "girlie magazines" to a minor. Although the magazines were not legally obscene, the Court held that a state's obligation to protect its young justified a looser interpretation of objectionable material.

Miller v. California, 413 U.S. 15 (1973): The current test of obscenity asks: (a) whether the average person, applying contemporary community standards would find that the work, taken as a whole, appeals to the prurient interest, (b) whether the work depicts or describes in a patently offensive way sexual conduct specifically defined by the applicable state law and (c) whether the work, taken as a whole, lacks serious literary, artistic, political or scientific value.

New York v. Ferber, 458 U.S. 747 (1982): A state law punishing "kiddie porn" is constitutional even if the material is not obscene according to *Miller v. California.* New York forbade any visual depiction of sexual conduct by children under the age of 16. "Sexual conduct" was broadly interpreted, and technically included photos in anatomy textbooks or *National Geographic* or illustrations in sex education works. The Court used the rationale of *Ginsberg* to justify the state's duty to protect exploitation of and prevent physical or emotional damage to minors.

8. Advertising regulations

Virginia State Board of Pharmacy v. Virginia Citizens' Consumer Council, Inc., 425 U.S. 748 (1976): Accurate advertising of legal products or services has constitutional protection. Advertising the prices of prescription drugs had been prohibited by Virginia law until the Court ruled that such information was of value to the public. The Supreme Court was finally acknowledging that commercial speech deserved the constitutional protection much earlier given to political expression.

Chicago Joint Board v. Chicago Tribune, 435 F.2d 470 (7th Cir. 1970): A privately owned newspaper cannot be forced to print an advertisement. Union members argued that the Chicago daily newspapers' refusal to carry an ad critical of Marshall Field and Company denied the union members access to the citizens. The Court disagreed, ruling that the government cannot require a private newspaper to carry advertising.

Zucker v. Panitz, 299 F. Supp. 102 (S.D.N.Y. 1969): A public school's student newspaper that has printed stories on public issues and accepts advertising may not deny students the right to advertise regarding those issues. In New York, a school principal had overruled the newspaper editors' decision to carry editorial advertising regarding the Vietnam War. The judge ruled that the newspaper had been established as a forum for student ideas and an advertising forum, so school officials could not deny expression on a topic to which they objected.

9. Broadcast regulations

Red Lion Broadcasting Co. v. FCC, 395 U.S. 367 (1969): The fairness doctrine and its stipulation that persons attacked on the air must be granted free air time to respond do not deprive broadcasters of constitutional rights. When a minister on a religious program attacked Fred Cook, author of a book about Barry Goldwater, Cook demanded that he be given free time to respond—as the FCC had prescribed under the fairness doctrine. The Court upheld the doctrine and Cook, ruling that the value in access to the limited public airwaves outweighs the broadcasters' interests.

CBS v. Democratic National Committee, 412 U.S. 94 (1973): Broadcasters must be fair in covering controversial issues, but have discretion as to which issues to cover and how to cover them. The Democratic National Committee argued that broadcasters should not be allowed to refuse to sell advertising time to groups wishing to comment on public issues. Broadcasters must fairly treat such issues, the Court said, but how they treat those issues is up to them. They do not have to treat such issues through editorial advertising if they so decide.

FCC v. Pacifica Foundation, 438 U.S. 726 (1978): The FCC may punish a licensee/station that airs indecent, but not legally obscene, language because of the public nature

of the airwaves. A citizen complained that a Pacifica station had aired George Carlin's "Seven Dirty Words" record cut. Although the station had warned listeners that they may be offended by the language, the Court said, the pervasive nature of radio permitted the FCC to apply a tighter standard of acceptable content than would apply to the print media.

10. Student rights and responsibilities

Eisner v. Stamford Board of Education, 440 F.2d 803 (2nd Cir. 1971): Prior review procedures—how and to whom copy is to be submitted and when a decision will be made—were lacking, so the school lost this case. But the Court said that censorship of material that would interfere with the operation and discipline of the school, cause disruption or invade the rights of others was not unconstitutional. In this case, none of the content in the underground newspaper students were distributing on campus met the legal justification for censorship.

Frasca v. Andrews, 463 F.Supp. 1043 (E.D.N.Y. 1978): The principal was allowed to stop distribution of the student newspaper because of two letters to the editor—one from lacrosse team members who threatened the sports editor and another accusing a student government officer of illegal activity. The judge said of the lacrosse letter that "publication would create a substantial risk of disruption of school activities." The judge permitted withholding the second letter because the principal had shown a reasonable belief that the letter was libelous.

Fujishima v. Board of Education, 460 F.2d 1355 (7th Cir. 1972): To require prior review and approval of material—either school-sponsored or not—before distribution in the school is unconstitutional. The 7th Circuit (covering Illinois, Indiana and Wisconsin) is the only one in the country that places the same limits on prior restraint of the high school press as it does on restraint of the professional media. Here, two students were suspended for distributing an underground newspaper; a third student was suspended for handing out anti-war literature. The court of appeals said regulation and punishment are permissible, but a ban in the high school carries with it the burdens of a ban on any publication elsewhere.

Gambino v. Fairfax County School Board, 564 F.2d 157 (4th Cir. 1977): The school could regulate teaching sex education, but the student newspaper is not part of the curriculum and could not be prohibited from publishing material that the school had said could not be taught in class. The principal had refused to allow a story entitled "Sexually Active Students Fail To Use Contraception." The district court judge, whose decision was upheld, said that the student newspaper was "conceived, established, and operated as a conduit for student expression on a wide variety of topics. It falls clearly within the parameters of the First Amendment."

Jacobs v. Board of School Commissioners, 490 F.2d 601 (7th Cir. 1973), dismissed as moot, 420 U.S. 128 (1975): Underground papers and other anonymous material that is sold or distributed by nonstudents could not be banned without specifically showing that such distribution would disrupt the school. Even the use of "four-letter words" was not justification for banning a publication. Several "earthy words" probably would not disrupt the school, the lower court said, and do not make "The Corn Cob Curtain" an obscene publication.

Nicholson v. Board of Ed. of Torrance United School Dist., 682 F.2d 858 (9th Cir. 1982): Adviser Don Nicholson was not denied his constitutional rights when he was dismissed for, among other things, failing to submit newspaper copy to the principal for review. Censorship of all content is not permissible, but review for inaccuracies is allowed.

Nitzberg v. Parks, 525 F.2d 378 (4th Cir. 1975): Prior review of material is not unconstitutional, but the school here had failed to define clearly and specifically what material could be prohibited and had not outlined a clear and precise appeals process. This is another instance of a court of appeals calling for procedural guidelines as a requirement for prior review—but then failing to find the prepared guidelines to be constitutional.

Reineke v. Cobb County School District, 484 F. Supp. 1252 (N.D.Ga. 1980): The principal and advise censored—on the grounds of poor taste—the word "damn" and responses from teachers who were asked their attitudes on gay teachers. School officials also later confiscated an issue and then shut down the paper. A Georgia court said officials acted unconstitutionally because there was no evidence of libelous, obscene or disruptive content. The judge found evidence that the paper was closed because of dissatisfaction with the content, and this was the first court to rule such action unconstitutional in the high school.

Thomas v. Granville School District, 607 F.2d 1043 (2nd Cir. 1979): Students were unjustly disciplined for distributing underground papers off school grounds when the content offended school officials but there was no evidence of school disruption. Once again, a court ruled that including stories offensive to school officials—in this case, regarding prostitution and masturbation—is not enough to justify stopping a publication unless there also is evidence of disruption of the school.

Trachtman v. Anker, 563 F.2d 512 (2nd Cir. 1977): A student newspaper's questionnaire on sexual attitudes and habits could be prohibited because psychologists testified that some students may suffer "significant psychological harm" from the survey and this was a form of school disruption. Four experts in psychology and psychiatry had testified that the survey might harm some adolescents in New York's Stuyvesant High School.

Williams v. Spencer, 622 F.2d 1200 (4th Cir. 1980): Noting that students do not have the same rights as adults, the circuit court ruled that advertisements for drug paraphernalia could be prohibited from the student newspaper because the ads encouraged activity that endangers the health and safety of students. The court alluded to the school officials' responsibility to protect their students, implying a corollary to the *Trachtman* case's "psychological harm" justification for censorship.

Zucker v. Panitz, 299 F.Supp. 102 (S.D.N.Y. 1969): The principal could not prevent a student newspaper from printing an advertisement opposing the Vietnam War when the student newspaper had been acting as a forum for opinions on all sides of social issues, including the war.

Resources

Organizations

American Bar Association, 750 North Lake Shore Drive, Chicago, IL 60611; (312) 988-5000.

American Civil Liberties Union, 132 W. 43rd St., New York, NY 10036.

American Newspapers Publishers Association Foundation, The Newspaper Center, Box 17407, Washington Dulles International Airport, Washington, DC 20041.

Columbia Scholastic Press Association and Columbia Scholastic Press Advisers Association, Box 11, Central Mail Room, Columbia University, New York, NY 10027.

Institute for Freedom of Communication, 918 16th St., N.W., Washington, DC 20006; (202) 466-8251. Founded in 1983 to seek research grants for projects designed to support freedom of expression and improved understanding of the First Amendment.

Journalism Education Association, Attn.: Lois Lauer Wolfe, Box 99, Blue Springs, MO 64015.

Law in a Changing Society, 3700 Ross Ave., Box 175, Dallas, TX 75204. This is an organization "designed to increase the citizenship competencies of students by exposing them to the origin, rationale, and applications of the law." It offers six high school curriculum packets, each containing two or three units for different grades. The six packets cover the Constitution, the First Amendment, the courts, the criminal justice system, free press v. fair trial and the police.

Law in a Free Society, Center for Civic Education, 5115 Douglas Fir Drive, Calabasas, CA 91302. Started by the State Bar of California, this body offers a civic education curriculum at the elementary and secondary school levels. Teachers may get a list of selected readings, sets of goals and activities and lesson plans for each of eight topics: authority, privacy, justice, responsibility, diversity, property, participation and freedom.

National Association of Secondary School Principals, 1904 Association Drive, Reston, VA 22091.

National Council for the Social Studies, 3615 Wisconsin Ave., N.W., Washington, DC 20016.

National Council of Teachers of English, 1111 Kenyon Road, Urbana, IL 61801.

National Scholastic Press Association, 620 Rarig Center, 330 21st Ave. S., University of Minnesota, Minneapolis, MN 55455.

The Newspaper Fund, P.O. Box 300, Princeton, NJ 08540.

Society of Professional Journalists, Sigma Delta Chi, 840 North Lake Shore Drive, Suite 801W, Chicago, IL 60611 (312) 649-0060.

Special Committee on Youth Education for Citizenship, American Bar Association, 750 North Lake Shore Drive, Chicago, IL 60611; (312) 988-5735. This national clearinghouse for law-related education also publishes several periodicals. *Update on Law-Related Education* provides detailed coverage of legal issues, effective classroom strategies and the latest law-related curriculum materials. *LRE Report* is a free newspaper covering the latest developments in law-related education. *LRE Project Exchange* is a free newsletter giving practical advice on setting up educational programs and reporting on ongoing programs nationwide.

Student Press Law Center, 800 18th St., N.W., Suite 300, Washington, DC 20006; (202) 466-5242. The SPLC is a national, nonprofit organization providing legal assistance and information on matters of censorship and other related legal issues to student journalists and faculty advisers.

Quill and Scroll Society, School of Journalism, University of Iowa, Iowa City, IA 52240.

Publications

Bill of Rights Newsletter, published quarterly by the Constitutional Rights Foundation, 6310 San Vicente Blvd., Suite 402, Los Angeles, CA 90048.

Columbia Journalism Review, published bimonthly by the Graduate School of Journalism, Columbia University, 700 Journalism Building, Columbia University, New York, NY 10027.

Communication: Journalism Education Today, published quarterly by the Journalism Education Association, Box 99, Blue Springs, MO 64015.

English Journal, published eight times a year by the National Council of Teachers of English, 1111 Kenyon Road, Urbana, IL 61801.

First Amendment Congress Newsletter, published three times a year by the First Amendment Congress, c/o ANPA Foundation, The Newspaper Center, Box 17407, Washington Dulles International Airport, Washington, DC 20041.

Letter of the Law, a quarterly newsletter for high school students who wish to learn more about their rights. Children's Legal Rights, 2008 Hillyer Place, N.W., Washington, DC 20009.

NASSP Bulletin, published monthly, September through May, by the National Association of Secondary School Principals, 1904 Association Drive, Reston, VA 22091.

News Media and the Law, published four times a year by The Reporters Committee for Freedom of the Press, summarizing state and federal cases involving the news media. Issues are $5 each from News Media and the Law, Room 300, 800 18th St., N.W., Washington, DC 20006.

Quill and Scroll, published bimonthly during the school year by the Quill and Scroll Foundation, School of Journalism, University of Iowa, Iowa City, IA 52242.

School Press Review, published monthly October through May, Box 11; Central Mail Room, Columbia University, New York, NY 10027.

Social Education, published seven times a year by the National Council for the Social Studies, 3615 Wisconsin Ave., N.W., Washington, DC 20016.

Student Press Law Center Report, published three times a year by the Student Press Law Center, 800 18th St., N.W., Suite 300, Washington, DC 20006. Yearly subscriptions are $10.

Trends in Publications, published eight times a year by the National Scholastic Press Association, 620 Rarig Center, 330 21st Ave., S., University of Minnesota, Minneapolis, MN 55455.

Update on Law-Related Education, published three times a year by the American Bar Association's Youth Education for Citizenship Committee, 750 North Lake Shore Drive, Chicago, IL 60611. Yearly subscriptions are $7.50.

Books and articles

(* indicates resources of particular use to teachers)

*Adams, Julian. *Freedom and Ethics in the Press.* New York: Richards Rosen Press, Inc. 1983. 126-page hardcover. Twenty chapters provide an overview of all areas of press law, from prior restraint to confidentiality of sources. Discussion of student press is included, with chapters throughout dealing with rights and responsibilities in the school setting.

———. *Journalism Bibliography.* Blue Springs, MO.: Journalism Education Association. 1984. A 16-page annotated listing of print and audiovisual resources for journalism and mass media teachers.

———, and Kenneth Stratton. *Press Time,* 3d ed. Englewood Cliffs, NJ: Prentice-Hall. 1975. This 489-page textbook devotes much space to the student press, including a 15-page chapter on "Responsibility of the Student Newspaper" and sections on "Freedom of the Student Press" and "What Regulates the Press?" Activities and discussion questions. A much-needed, updated 4th edition is due in 1985.

"Administrative Control of Student Publications." A March 1978 legal memorandum published by the National Association of Secondary School Principals. This 10-page discussion concludes with recommendations to administrators regarding control of the student press.

Allnutt, Benjamin W., ed. *Springboard to Journalism,* rev. ed. New York: Columbia Scholastic Press Advisers Association. 1973. This popular 96-page paperback for training newspaper staffs includes a chapter on "Legal Rights and Responsibilities of Scholastic Publications." A new edition is scheduled for publication in 1985.

*"Amendment I: Free Press and a Free Society," *Teaching with Newspapers: A Newsletter for Methods Instructors.* Vol. 3, No. 1 (November 1980). An excellent 12-page newsletter devoted entirely to the First Amendment, with questions, activities, case summaries, resources. Photocopies available from the American Newspaper Publishers Association Foundation, Box 17407, Washington Dulles International Airport, Washington, DC 20041.

Ashley, Paul P. *Say It Safely: Legal Limits in Publishing, Radio and Television,* 5th ed. Seattle: University of Washington Press. 1976. A 252-page introductory textbook.

*Berger, Fred R. *Freedom of Expression.* Belmont, CA: Wadsworth Publishing Co., 1980. A 207-page paperback that "surveys some of the theoretical and practical problems that arise in connection with freedom of expression." The collection of essays begins with John Stuart Mill, touches on the obscenity controversy and discusses symbolic speech. The landmark *Tinker v. Des Moines* Supreme Court decision is reprinted here.

Bibliography: Newspaper in Education Publications, 5th ed. Washington, DC: American Newspaper Publishers Association Foundation. 1984. A 63-page annotated collection of 136 teacher guides and curriculum materials. Single copies free from American Newspaper Publishers Association, Box 17407, Dulles International Airport, Washington, DC 20041.

Cary, Eve. *What Every Teacher Should Know About Stuent Rights.* Washington, DC: National Education Association. 1975. A 41-page booklet with a section on "Freedom of Expression" and a good, though general, bibliography.

Clark, Todd. *Fair Trial/Free Press.* Riverside, NJ: Glencoe Publishing Co. 1977. This 72-page book uses discussion questions and case studies to examine the conflict between two constitutional rights.

Code of Student Rights and Responsibilities. This booklet from the National Education Association "explores the rights and responsibilities of students and the causes of student unrest; develops a definitive statement on student rights and responsibilities; designs action programs to ensure that the basic rights of students are not jeopardized."

Collins, Keith, ed. *Responsibility & Freedom in the Press: Are They in Conflict?* Washington, D.C.: Citizen's Choice, Inc. 1985. A report of the Citizen's Choice National Commission on Free and Responsible Media, a 34-member panel convened to study public attitudes and the current state of the media in the U.S.

"Concerning Student Publications: A Report and a Statement of Opinion." A 1977 legal memorandum from the National Association of Secondary School Principals that defends the administration's prior restraint in the *Gambino v. Fairfax County School Board* case.

Consoli, John. "Student Editors Punished for Editorial Viewpoint." *Editor and Publisher.* April 19, 1980, pp. 16, 38. This summary of a free press controversy at Baylor University is a good trigger to discussion of how the First Amendment can be applied differently at private and public schools.

Copyright Basics. Washington, DC: Copyright Office, Library of Congress. 1980. A pamphlet that provides just what its title says it will.

Cullen, Jr., Maurice R. *Mass Media & the First Amendment.* Dubuque, IA: Wm. C. Brown Co. 1981. The subtitle of this 452-page text indicates its value: "An introduction to the issues, problems, and practices."

Diamond, D. A. "First Amendment and Public Schools: The Case Against Judicial Intervention." *Texas Law Review.* Vol. 59 (March 1981), pp. 477-528. A discussion of the rationale for giving school officials latitude in controlling the school and students.

Dorsen, Norman, ed. *Our Endangered Rights.* New York: Pantheon Books or the ACLU. 1984. A collection of 15 essays by attorneys and other representatives of the American Civil Liberties Union applying constitutional rights to daily life and examining the status of civil liberties in the 1980s.

Dowling, Ruth, Nancy Green, and Louis E. Ingelhart. *Guidelines for Journalism Instructional Programs and Effective Student Publications.* DeKalb, IL: Association for Education in Journalism. 1977. A 30-page booklet with a section entitled "First Amendment Considerations" and a bibliography.

Engel, Jackie, ed. *Survival Kit for School Publications Advisers,* 3d ed. Lawrence, KS: Kansas Scholastic Press Association. 1984. "Protecting the Program and the School" is a 27-page chapter in this 272-page collection of articles and exercises.

English, Earl, and Clarence Hach. *Scholastic Journalism,* 7th ed. Ames, IA: The Iowa State University Press. 1984. This textbook includes exercises with each chapter, including "Canons of Journalism and Press Criticism," "Standards of Good Newspaper Practice," "Newspaper Evaluation," "Evaluating Motion Pictures" and "Standards of Good Broadcasting."

Epstein, Sam and Beryl. *Kids in Court: The ACLU Defends Their Rights.* New York: Four Winds Press. 1982. 223 pages. After a brief history of the American Civil Liberties Union, this hardcover book includes case studies of ACLU defenses in cases involving the rights of young people. Invasion of privacy, free speech, corporal punishment, search and seizure and freedom of the press are among the topics discussed.

First Amendment Unit. Washington, DC: The ANPA Foundation. 1982. This 16-page, camera-ready educational supplement shows how a case finds its way to the U.S. Supreme Court and includes summaries of important press rights cases, a lesson plan and exercises for the study of the First Amendment.

Free Press & Fair Trial. Washington, DC: The ANPA Foundation. A 76-page book by the American Society of Newspaper Editors and the American Newspaper Publishers Association Foundation that traces the history of the First and Sixth Amendments. Gag orders, voluntary press-bar guidelines, closed courtrooms and cameras in the courtroom are discussed.

"Freedom of the Press." A special section on the First Amendment in the February-March 1980 issue of *Today's Education* (Vol. 69, No. 1). Includes "Courts and the Media—Freedom of the Press on Trial," by Ninth Circuit Court of Appeals Judge Alfred Goodwin and Lynn Taylor (pp. 46-51); "Walter Cronkite and the Supreme Court" (pp. 52-55); and "What About the Student Press?" by Michael Simpson, former director of the Student Press Law Center (pp. 59-64).

Friendly, Fred W. *Minnesota Rag: The Dramatic Story of the Landmark Supreme Court Case that Gave New Meaning to Freedom of the Press.* New York: Random House. 1981. A detailed, anecdotal discussion of the landmark 1931 prior restraint case, *Near v. Minnesota.*

———, and Martha J.H. Elliott. *The Constitution: That Delicate Balance.* New York: Random House. 1984. Publication of this 340-page book coincided with the airing on public television of a 13-part series by the same name. The book describes the human dramas behind cases that clarified what the Constitution means. (See description of the series in "Audiovisuals: Videotapes" section that follows.)

Haimen, Franklyn S. *Freedom of Speech.* Skokie, IL: National Textbook Co. 1978. A 221-page text that incorporates free speech cases in a discussion of freedom of the press.

Hentoff, Nat. *The First Freedom: The Tumultuous History of Free Speech in America.* New York: Delacorte Press. 1980. This 340-page book by a proponent of student rights includes an opening 54-page chapter on the rights of students, teachers and librarians.

Hulteng, John L. *The Messenger's Motives: Ethical Problems of the News Media.* New York: Prentice-Hall. 1976. Examines some 200 situations involving ethics as applied to all the mass media. Instructor's manual is available and cases are offered for student discussion in this 262-page paperback.

Kristof, Nicholas D. *Freedom of the High School Press.* Lanham, MD: University Press of America. 1983. This 118-page update on student press rights grew from a senior thesis at Harvard University. Kristof uses results of a national survey on censorship in secondary schools to present legal and sociopolitical arguments for a free high school press.

**Law and the Courts: A Layman's Handbook of Court Procedures,* with *a Glossary of Legal Terminology.* Published in 1980 by the American Bar Association as a reference for nonlawyers, this 36-page booklet is available for $1 from the ABA. (See "Organizations" for address.)

Law of the Student Press. Iowa City, Iowa: Quill and Scroll, University of Iowa. 1985. This $5 Student Press Law Center book, by J. Marc Abrams and Michael Simpson, who have been directors of the SPLC, examines legal issues facing student journalists, advisers and administrators on the high school and college levels.

Levine, Alan, Eve Cary, and Diane Divoky. *The Rights of Students: The Basic ACLU Guide to a Student's Rights.* New York: Avon Books. 1973. A 160-page paperback guide.

Manual for Student Expression: The First Amendment Rights of the High School Press. Washington, D.C.: The Student Press Law Center. 1976. A 30-page booklet written "to provide students, teachers, and administrators with a guide on the First Amendment problems most frequently presented by student journalism."

McCulloch, Frank, ed. *Drawing the Line.* Washington, D.C.: American Society of Newspaper Editors Foundation. 1984. A 97-page book with contributions by 31 newspaper editors, who give accounts of the most difficult ethical dilemmas they have faced in the course of their work.

Mootafes, Dorothy, "Taking (and Teaching) the First Amendment: The Right to Know." *Communication: Journalism Education Today.* Vol. 16 (Fall 1982), pp. 6-11. A brief overview and introduction to a teaching unit, with an outline for three-day and two-week units. Suggested activities and resources offered.

Moran, K.D., and M.A. McGhehey. *The Legal Aspects of School Communication.* Topeka, KS: National Organization on Legal Problems of Education, 5401 Southwest Seventh Avenue. 1980. A 105-page paperback by officials of the Kansas Association of School Boards, offering chapters on "Freedom of Student Expression," "Employee Communications" and "Communications and the Public." Appendices include a model publications policy, distribution guidelines and a newspaper policy statement.

Moyes, Norman B. *Journalism.* Lexington, MA: Ginn and Company. 1984. A 598-page textbook with a 32-page chapter entitled "Preserving a Free but Responsible Press," activities at the end of the chapters and useful appendices that include codes of ethics and codes for the various mass media. (Woodring and Moyes' *Teacher's Resource Book: Journalism* complements this text.)

Nelson, Jack. *Captive Voices: The Report of the Commission of Inquiry Into High School Journalism.* New York: Schocken Books, 1974. A controversial paperback that raises important questions about the freedom and responsibility of high school journalism and its proponents.

Nelson, Jerome L. *Libel: A Basic Program for Beginning Journalists.* Ames, IA: Iowa State University Press. 1973. An 89-page paperback text that includes hypothetical cases, review quizzes and discussion questions.

Nichols, John E. "Vulgarity and Obscenity in the Student Press." *Journal of Law and*

Education. Vol. 10 (April 1981), pp. 207-218. An update and overview.

Offer, David B. "Wisconsin Officials, Journalists to Establish Press Guidelines." Reprinted from *The Quill* in *Quill & Scroll,* December-January 1979, p. 20. Result is "Proposed Guidelines for Free and Responsible Student Journalism," prepared under the direction of Robert Wills, editor of *The Milwaukee Sentinel.*

*Overbeck, Wayne, and Rick D. Pullen. *Major Principles of Media Law.* New York: Holt, Rinehart and Winston. 1982. This 359-page hardcover textbook provides a clear and useful summary of media law in the 1980s. An overview of how the court system works, historical context of the First Amendment, major legal areas of free speech and the media and a 14-page chapter on the student press offer balance. (A second edition is scheduled for publication early in 1985.)

Pasqua, Tom. "Teaching Ethics, a Risky Adventure." *Communication: Journalism Education Today.* Vol. 16 (Winter 1982), pp. 2-9. Strategies for teaching ethics, and the benefits and pitfalls of using existing codes of ethics are discussed. The SPJ, SDX and American Society of Newspaper Editors codes are included.

*Pember, Don R. *Mass Media Law,* 3d ed. Dubuque, IA: Wm. C. Brown Co. 1984. This 610-page textbook, probably too comprehensive for classroom use in the high school, is a current, complete and readable resource for the teacher, but does not cover the student press.

Phelps, Robert H., and E. Douglas Hamilton. *Libel: Rights, Risks, Responsibilities,* rev. ed. New York: Dover Publications, Inc. 1978. A 436-page paperback that tells you all you need to know—and more—about this important area of law. Includes an index of cases and an epilogue on privacy.

Purvis, Hoyt H., ed. *The Press: Free & Responsible?* Austin, TX: Lyndon B. Johnson School of Public Affairs, University of Texas at Austin. 1982. A 114-page paperback that includes the views of 20 journalists, scholars and former public officials discussing the role of the media in society.

**Quill.* Special First Amendment issue of September 1976 with articles on such topics as the evolution of free speech and press and current threats to that freedom, with significant First Amendment court cases summarized. The 40-page magazine is available from the Society of Professional Journalists. (See "Organizations" for address.)

Reddick, DeWitt C. *Journalism Exercise and Resource Book: Aids for Teaching High School Journalism.* Belmont, CA: Wadsworth Publishing Co., 1984. This paperback is designed to accompany Reddick's *The Mass Media and the School Newspaper,* but can be used independently. Little on press law per se, but good page of questions/activities on freedom and responsibility.

———. *The Mass Media and the School Newspaper.* Belmont, CA: Wadsworth Publishing Co. 1984. A comprehensive textbook with teacher's manual. Included in the "Mass Media in Modern Society" section is a chapter entitled "Dynamic Duo: Freedom and Responsibility," with suggested activities.

Russell, Luana. "Recycle the Blunders to Teach Ethics." *Communication: Journalism Education Today.* Vol. 16 (Winter 1982), pp. 10-12. Suggests ways to incorporate teaching ethics into all parts of journalism teaching.

*Sanford, Bruce W. *Synopsis of the Law of Libel and the Right of Privacy,* rev. ed. New York: World Almanac Publications. 1981. A 37-page booklet that offers a timely, concise and clear summary of libel and privacy.

"SPLC Model Guidelines for Student Publications." *Student Press Law Center Report.* Winter 1983-84, pp. 21-22. This model includes sections on overall policy, responsibilities of student journalists, prohibited material, protected speech and prior review.

*Starr, Isidore. *The Idea of Liberty: First Amendment Freedoms.* St. Paul, MN: West Publishing Co. 1978. This 234-page book offers a good overview of freedoms of speech, press, assembly, petition and religion, and is an excellent resource for teachers. Discussion questions and activities based on facts from important court cases are useful teaching tools.

State Education Department booklets on student rights include the following: (Ask your state Department of Education if it has a similar booklet.)

Students and Schools: Rights and Responsibilities, Illinois Office of Education.

Guidelines for Student Rights and Responsibilities, New York State Education Department.

A Recommended Guide to Students' Rights and Responsibilities in Michigan, Department of Education.

Students' Rights, South Carolina Department of Education.

Stevens, George E., and John B. Webster. *Law and the Student Press.* Ames, IA: The Iowa State University Press. 1973. A 158-page examination of censorship, libel, obscenity, contempt, advertising regulation, copyright, access, distribution and other issues. Dated but has good appendices that include policy statements and distribution guidelines.

Stevens, John D. *Shaping the First Amendment: The Development of Free Expression.* Beverly Hills: Sage Publications. 1982. In 157 pages, Stevens traces the evolution of First Amendment law and theory through discussion of specific free speech controversies and issues such as wartime dissent, religious freedom and the threats posed by new technology.

Swain, Bruce M. *Reporters' Ethics.* Ames, IA: The Iowa State University Press. 1978. 153 pages. Hardcover. Examines conflict of interest, source relations, off-the-record comments, privacy, codes of ethics and gifts; includes ethical codes of journalism organizations and large newspapers.

Textbook Publishers and the Censorship Controversy. A pamphlet with answers to censorship problems, available at no charge from the school division of the Association of American Publishers, One Park Avenue, New York, NY 10016.

Trager, Robert. *Student Press Rights.* DeKalb, IL: Journalism Education Association. 1974. An 84-page paperback that cites most of the cases that are the foundation of student press rights today. Chapters on background, development, particular circumstances, First Amendment limitations, administrative regulations and administrators' responsibilities provide a valuable overview.

Update on Law-Related Education. This publication by the American Bar Association examines useful topics of law-related education, from elementary school through college. See especially the Winter 1978 issue on "Freedom of Press on Trial," with articles on mock trials in the classroom, a historical look at the struggle for a free press and an article entitled "The Emerging Student Press."

Woodring, Virginia, and Normal Moyes. *Teacher's Resource Book: Journalism.* Lexington, Mass: Ginn and Company. 1984. A 253-page workbook that accompanies the Moyes text, *Journalism,* including teaching strategies and laboratory exercises on "Preserving a Free but Responsible Press."

*Zuckman, Harvey L., and Martin J. Gaynes. *Mass Communications Law in a Nutshell,* 2d ed. St. Paul, MN: West Publishing Co. 1983. This 473-page paperback is a read-

able discussion of print and broadcast law, with reference to appropriate cases. It is a useful teacher reference.

Audiovisuals: Filmstrips

Censorship. Two filmstrips, with cassettes or records; 40 minutes. A chronological examination of changing mores, legal and moral concepts and specific issues such as movie ratings and school book bans. 1980. Prentice-Hall Media Inc., 150 White Plains Road, Tarrytown, NY 10591.

Communication: Impact on Society. Color. Two filmstrips with records or cassettes and program guide. Discusses meaning of and threats to credibility, confidentiality of sources and recent pressures on print and broadcast media. Available from Columbia Scholastic Press Association, Box 11, Central Mail Room, Columbia University, New York, NY 10027.

Conflicts in Managing the News: The Media. Examines the media's power and role, with particular attention to the responsibility of the media as watchdogs of government. The threat of prior restraint is examined. Available slides, audio cassette and teachers' notes from Harper and Row, 2350 Virginia Ave., Hagerstown, MD 21740.

The First Amendment. A 42-frame filmstrip with illustrated narrative guide and activity lists. A historical look at the First Amendment that links its significance to contemporary life. 1977. VEC Inc., P.O. Box 52, Madison, WI 53701.

The First Amendment: Freedom of the Press. Color. Two filmstrips, 14 minutes each, with cassettes or records and a program guide. Looks at the origin and function of a free press, the conflict between the media and government and the responsibility of a free press when rights conflict. 1980. By The Associated Press. Distributed by Prentice-Hall Media, 150 White Plains Road, Tarrytown, NY 10591.

Free Speech and Press. 35 minutes, with teachers' guide, activity books, library kit, and ditto masters. Looks at First Amendment principles, the role of free speech, censorship, picketing, contempt of court, access to the news, obscenity, libel and privacy. 1974. Xerox Educational Publications, 245 Long Hill Road, Middletown, CT 06457, or Guidance Associates, Box 3000, Communications Park, Mount Kisco, NY 10549.

The Student Press: A Case Study. Color. 35 minutes. Dramatizes the conflict between students wanting to sell an unauthorized school newspaper and school officials who suspend the students for violating school rules. Viewers are left to discuss and resolve the issue after the filmstrip shows parents taking the issue to court. 1972. Guidance Associates, Communications Park, Box 300, White Plains, NY 10602.

Your Freedom and the First Amendment. Color. Six 20-minute filmstrips with record or cassette. A history of freedoms of press, speech, assembly and religion and the battle to keep those freedoms. 1976. Educational Enrichment, 110 S. Bedford Road, Mt. Kisco, NY 10549.

Audiovisuals: Films

America's Foundations of Liberty. Color. 15 minutes. The role of liberty in the growth of the United States is examined, as are the Bill of Rights, the Constitution and the interplay of the three branches of government. 1976. Kent State University, Audio Visual Services, Kent, OH 44242.

But You Can't Take It For Granted. A humorous trip through a community that suddenly must cope without its newspaper. Newspaper Readership Project, c/o Newspaper Advertising Bureau, 485 Lexington Ave., New York, NY 10017.

The Constitution in the 21st Century. Color. 12 minutes. The resiliency of the Constitution and its ability to serve future generations are discussed. 1975. Boston University, Audio-Visual Services, 565 Commonwealth Ave., Boston, MA 02215.

The Constitution: The First Amendment. Color. 12 minutes. An explanation of the First Amendment and the guarantees it provides. 1975. Boston University, Audio-Visual Services, 565 Commonwealth Ave., Boston, MA 02215.

Dear Lovey Hart: I Am Desperate. Color. 32 minutes. Part of the Afterschool Specials Series, this dramatization concerns a student who writes an advice column for the high school newspaper and has to learn about responsibility when some of her advice gets her into trouble. 1977. Teacher's guide included. Walt Disney Educational Media Co., 500 S. Buena Vista St., Burbank, CA 91521.

Democracy and Dissent (Part I): *The Will to be Free.* Color. 56 minutes. Frank Reynolds narrates an ABC News production that traces the fight for freedom from ancient Greece through the Middle Ages, the Renaissance and the Reformation to signing the Declaration of Independence. 1977. Syracuse University, Film Rental Center, 1455 East Colvin St., Syracuse, NY 13210.

Democracy and Dissent (Part II): *The Years Between.* Color. 56 minutes. Free speech concerns of the years between the American Revolution and World War II are examined, including alien and sedition laws, civil disobedience, women's rights and the right of association. 1977. Syracuse University, Film Rental Center, 1455 East Colvin St., Syracuse, NY 13210.

The Federal Communications Commission. B&W. 15 minutes. Describes the function of the FCC, problems it has to resolve, and the structure and responsibility of this regulator of the broadcast media. 1963. McGraw-Hill Book Co., 1221 Avenue of the Americas, New York, NY 10020.

The First Freedom. Color. 22 minutes. Examines the role of the journalist in dealing with government and offers historical background on the significance of the First Amendment. Contrasts the press in the small town with the national media. 1974. The Associated Press, 2021 K St. N.W., Washington, DC 20006, or Newspaper Advertising Bureau, 485 Lexington Ave., New York, NY 10017.

Free and Responsible Press. 20 minutes. This drama depicts the dilemma an editor faces when deciding whether to print a story that will bring grief to a prominent community member. Meant to prompt discussion of ethical concerns. 1962. Teaching Film Custodians, 25 W. 43rd St., New York, NY 10036.

Freedom of Speech. Color. 20 minutes. Examines the conflict between the First and Sixth Amendments and why free speech is not an absolute right. Shows a court case with the defendant accused of disturbing the peace and inciting a riot via his anti-semitic views. Both sides are presented and the viewer is left to decide who is right. 1970. BFA Educational Media, 2211 Michigan Ave., Santa Monica, CA 90404.

Freedom of the Press. Color. 23 minutes. The viewer is left to resolve the conflict when a reporter is subpoenaed by a grand jury and told to reveal his sources. 1973. BFA Educational Media, 2211 Michigan Ave., Santa Monica, CA 90404, or Barr Films, 3490 E. Foothill Blvd., Pasadena, CA 91107.

A Free Press. Color. 15 minutes. How free is the press? How should freedom of the press be balanced with other freedoms? These questions and others are discussed in the context of press-government relations and ethical standards. Journalists featured include Jack Anderson, Walter Cronkite, Bill Moyers, Edwin Newman,

George Will and Ben Bradlee. 1977. Indiana University Audio-Visual Center, Bloomington, IN 47401.

Free Press v. Fair Trial: The Sheppard Case. Color. 27 minutes. This film consists entirely of documentary materials regarding the 1966 Supreme Court case—newspaper articles, TV videotapes and newsreel interviews with those involved. 1969. Encyclopaedia Britannica Educational Corp., 425 N. Michigan Ave., Chicago, IL 60611.

Free Speech for Whom? Color. 15 minutes. This segment from the "60 Minutes" program has a discussion guide for its look at a free speech issue—whether all subjects and speakers have the right to be heard. Dr. William Shockley, proponent of controversial views on the relationship between race and intelligence, is the focus of the piece. 1976. CBS News, 383 Madison Ave., New York, NY 10017.

I.F. Stone's Weekley. B&W. 62 minutes. This essay on journalist I.F. Stone highlights political reporting and the need for a vigilant press as a watchdog of government. The film raises questions about the relationship between the media and government. 1973. Iowa State University Audio-Visual Center, Ames, IA 50011.

Justice Black and the Bill of Rights. Color. 32 minutes. Supreme Court Justice Hugo Black discusses the balancing of constitutional rights and morality, freedom of speech and police power versus rights of the accused in this CBS News presentation with Eric Sevareid and Martin Agronsky. 1970. Syracuse University, Film Rental Center, 1455 East Colvin St., Syracuse, NY 13210.

Mr. Justice Douglas. B&W. 52 minutes. Eric Sevareid interviews the late Supreme Court Justice William Douglas. Government intrusion into private lives, dissenters' rights, pornography and the right to preserve confidential sources are among the issues discussed. 1972. CBS News, 383 Madison Ave., New York, NY 10017.

Permissiveness, Ethics, and Credibility in the Media. 40 minutes. Hal Buell, executive newsphoto editor of The Associated Press, analyzes standards of taste and ethics in photojournalism. His comments and examples focus on where the audience's right to know ends and the individual's right of privacy begins. Also touches on responsibility of journalists to consider audience reactions and expectations. Based on Buell's presentation to 1975 Picture Editing Workshop at Indiana University. Foellinger Learning Lab, Indiana University, Bloomington, IN 47405.

A Question of Balance. Color. 27 minutes. Also available on videotape! With ancillary teacher's materials. Weighs the guarantee of freedom of the press (First Amendment) with the right to a fair trial (Sixth Amendment). Produced by Vision Associates in cooperation with the American Bar Association and the American Newspaper Publishers Association. Vision Associates, 665 Fifth Ave., New York, NY 10022.

The Right to Know. Color. 17 minutes. The issue of classified information is examined through short, informal dramatizations. Author Studs Terkel narrates this film on the abuse of power, management of the news and intimidation of the media. 1973. Indiana University Audio-Visual Center, Bloomington, IN 47401.

Six Hours to Deadline: A Free and Responsible Press. 20 minutes. Looks at the ethical dilemma of a small-town editor who must decide whether to print a story that may hurt a local resident. 1955. Teaching Film Custodians, 25 W. 43rd St., New York, NY 10036.

The Speaker ... A Film About Freedom. Color. 42 minutes. With 32-page discussion guide. A drama about a university professor invited to a high school to speak about his theories of genetic inferiority of blacks. The student committee that invited the speaker is pressured by the community to reconsider, but refuses, and the school board president then cancels the speech. Film is designed to prompt discussion of constitutional protection for unpopular ideas. 1977. American Library Association, 50 E. Huron St., Chicago, IL 60611.

Speech and Protest. Color. 21 minutes. First Amendment rights of speech and assembly provide the framework for dramatizations and interviews with those involved in controversial situations. Foreign policy, academic freedom and anti-war demonstrations provide the basis for provocative questions. 1967. University of Missouri-Columbia, 505 E. Stewart Road, Columbia, MO 65211.

U.S. Supreme Court: Guardian of the Constitution. Color. 24 minutes. Landmark cases are used to show the history of the Supreme Court from 1789. Three prominent authorities discuss the Court's evolution—its unique role, its power and its protection of the people. 1973. University of Missouri-Columbia, 505 E. Stewart Road, Columbia, MO 65211.

What Johnny Can't Read. Color. 15 minutes. This segment from CBS's "60 Minutes" program raises questions about the selection of public school textbooks and about persons who put pressure on the schools. The film focuses on a Texas couple crusading nationwide against certain books. The film also covers pressure from ethnic groups, minorities and feminists. 1980. Syracuse University, Film Rental Center, 1455 E. Colvin St., Syracuse, NY 13210.

Audiovisuals: Videotapes

The Constitution: That Delicate Balance. A series of 13 one-hour tapes shown on public television in the fall of 1984 dealing with war powers and the Constitution; presidential privilege; election of the president; campaign spending; national security; religion, gun control and the right of assembly; right to live, right to die; rights of the accused; the insanity plea; cruel and unusual punishment; affirmative action; rights of aliens; and federalism. Random House has published an accompanying book of the same name by Fred Friendly and Martha Elliott. For the nearest available source of these videotapes, contact Media and Society Seminars, Graduate School of Journalism, 204 Journalism, Columbia University, New York, NY 10027; (212) 280-3666.

Fair Trial/Free Press. 60 minutes. Abe Rosenthal of The New York Times; Judge Ernst John Watts, dean of the National College of State Judiciary; and Judge Paul H. Roney, chairman of the American Bar Association Committee on Fair Trial and Free Press, discuss "gag orders" and proposed guidelines for pretrial and trial news coverage. 1976. Foellinger Learning Lab, Indiana University, Bloomington, IN 47405.

Audiovisuals: Audiotapes

Journalistic Freedom. 30 minutes. Shield laws and the right to protect confidential sources are discussed. The focus is Peter Bridge, who went to jail in 1972 for refusing to tell a grand jury the source for a news story he wrote. 1973. Netche Videotape Library, P.O. Box 83111, Lincoln, NE 68501.

An Overview of Scholastic Press Law. A lecture by J. Marc Abrams, executive director of the Student Press Law Center, to students at the 1984 Columbia Scholastic Press Association Convention in New York. Columbia Scholastic Press Association, Box 11, Central Mail Room, Columbia University, New York, NY 10027.

The Public's Right to Know. 27 minutes. Jack Anderson, syndicated columnist, discusses classification of information, the Freedom of Information Act and trends in

government secrecy. Center for Cassette Studies, 8110 Webb Ave., North Hollywood, CA 91605.

The Responsible Press. 28 minutes. Magazine and newspaper editors discuss limits on press freedom, especially concerning violent, sexually oriented or libelous material. Center for Cassette Studies, 8110 Webb Ave., North Hollywood, CA 91605.

Teaching kit

Freedom of the Press. Ethan Katsh of the University of Massachusetts has prepared this simulated newsgathering exercise that gets students to deal with such legal problems as libel, invasion of privacy, prior restraint, access to closed courtrooms, right of reply, protection of confidential sources, the fairness doctrine and journalism ethics. Designed for 11 to 35 students, the exercise lets students encounter legal and ethical dilemmas. As they unravel three hypothetical stories, students take the roles of editors, lawyers, reporters and news sources. 1983. $34.50 from Legal Studies Simulations, 42 Elwood Drive, Springfield, MA 01108.

Thomas Eveslage has taught high school English and journalism and now teaches communication law and ethics at Temple University. He has conducted workshops in Minnesota and Pennsylvania for publication advisers and student journalists and has researched and written about the impact of law on the student media. Eveslage has been a copy editor on two daily newspapers, worked for the Associated Press and served as a university news director.